

MONTANA LEGISLATIVE HISTORY

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Chapter 480 1997

Bill H 163 S _____ Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1-24 _____ c

2-10 _____ c

2-12 _____ c

2-19 _____ c

~~Date Out~~ 2-20 _____ c

3-7

3-14

3-21

S. Committee on Judiciary

Hearing Date(s) 4-7 _____ c

4-8 _____ c

_____ c

_____ c

DATE OUT 4-8

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

not 3-25

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HB 162 INTRODUCED BY DENNY

LC0405 DRAFTER: MITCHELL

REQUIRE THAT FEES COLLECTED FOR THE REGISTRATION OF
HAZARDOUS WASTE GENERATORS AND FEES FOR THE REISSUANCE
OR MODIFICATION OF PERMITS FOR HAZARDOUS WASTE
MANAGEMENT FACILITIES BE PLACED IN THE HAZARDOUS WASTE FEE
ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND

BY REQUEST OF DEPARTMENT OF ENVIRONMENTAL QUALITY

1/01	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO NATURAL RESOURCES		
1/09	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/20	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED		
1/24	2ND READING PASSED	63	35
1/25	3RD READING PASSED	65	32
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO NATURAL RESOURCES		
1/31	HEARING		
2/14	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	50	0
3/07	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/12	SIGNED BY SPEAKER		
3/13	SIGNED BY PRESIDENT		
3/13	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 84		
	EFFECTIVE DATE: 07/01/97		

HB 163 INTRODUCED BY J. JOHNSON, ET AL.

LC0429 DRAFTER: PETESCH

REVISE AND CLARIFY THE LAWS GOVERNING ADOPTION

BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

1/01	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO JUDICIARY		
1/24	HEARING		
2/07	FISCAL NOTE REQUESTED		
2/10	TABLED IN COMMITTEE		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE PRINTED		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/27	2ND READING PASSED	77	23
3/28	3RD READING PASSED	77	23
	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO JUDICIARY		
4/07	HEARING		
4/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/10	2ND READING CONCURRED	50	0
4/11	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	93	3
4/15	3RD READING CONCURRED AS AMENDED	84	15

4/24 SIGNED BY SPEAKER
 4/24 SIGNED BY PRESIDENT
 4/25 TRANSMITTED TO GOVERNOR
 5/02 SIGNED BY GOVERNOR
 CHAPTER NUMBER 480
 EFFECTIVE DATE: 10/01/97—SECTIONS 1-18, 27, 39-59, 61-64,
 66, 69-74 & 76-177
 EFFECTIVE DATE: 10/01/98—SECTIONS 19-26, 28-38, 60, 65,
 67, 68 & 75

HB 164 INTRODUCED BY TUSS

LC0209 DRAFTER: MALY

REVISE OCCUPATIONAL LICENSING LAWS, INCLUDING THOSE RELATED
 TO HEARING AID DISPENSERS, DENTISTS, BARBERS, PHYSICAL
 THERAPISTS, NATUROPATHIC PHYSICIANS, REAL ESTATE
 APPRAISERS, PRIVATE INVESTIGATORS, FIRE PROTECTION
 EQUIPMENT INSTALLERS, FIRE SUPPRESSION SYSTEM INSTALLERS,
 CRANE AND HOIST OPERATORS, AND LICENSED PROFESSIONS AND
 OCCUPATIONS WITHOUT BOARDS

BY REQUEST OF DEPARTMENT OF COMMERCE

1/01	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO BUSINESS & LABOR		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/13	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED AS AMENDED	95	3
1/28	3RD READING PASSED	94	5
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO BUSINESS & INDUSTRY		
3/04	HEARING		
3/19	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	49	0
3/24	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS NOT CONCURRED	100	0
4/09	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	HEARING		
4/16	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/17	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	89	11
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	88	11
	SENATE		
4/10	FREE CONFERENCE COMMITTEE APPOINTED		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/17	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	1
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 481		
	EFFECTIVE DATE: 10/01/97		

HOUSE BILL NO. 163

INTRODUCED BY MENAHAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, AND 40-8-202, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of public health and human services authority to adopt administrative rules. The rules must provide procedures for the putative father registry, including methods of notification, filing, and accessing information. The department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary focus of the rules.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana Adoption Act".

1 **NEW SECTION. Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure
2 that the best interests of the child are met by adoption proceedings.

3 (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing
4 family that can give the child the care, protection, and opportunities essential for healthy personal growth
5 and development.

6 (3) The well-being of the adopted child is the main objective in the placement of a child for
7 adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition
8 of the interdependent needs and interests of birth parents and adoptive parents.

9 (4) It is the policy of the state of Montana to support relationships between adoptees and their birth
10 families when desired by the affected parties.

11
12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 156], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings
15 that are intended to result in the adoptee becoming the legal child of another person.

16 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
17 does not exist genetically.

18 (3) "Adoptive parent" means an adult who has become the mother or father of a child through the
19 legal process of adoption.

20 (4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United
21 States and that is expressly empowered to place children preliminary to a possible adoption.

22 (5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of
23 the child.

24 (6) "Child" means any person under 18 years of age.

25 (7) "Confidential intermediary" means a person certified by the department and under contract with
26 or employed by a nonprofit entity with expertise in adoption.

27 (8) "Court" means a court of record in a competent jurisdiction and in Montana means a district
28 court or a tribal court.

29 (9) "Department" means the department of public health and human services, provided for in
30 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual.

NEW SECTION. **Section 4. Venue.** (1) Proceedings for adoption must be brought in the district

1 court of the county where the petitioners reside.

2 (2) Petitions for appointment of a confidential intermediary may be filed:

3 (a) in the county where the decree of adoption was issued;

4 (b) in the county of residence of the petitioner; or

5 (c) if the petitioner resides out of state, in any county.

6
7 **NEW SECTION. Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

8 (a) the child does not have a living parent;

9 (b) the parental rights of the living parents of the child have been terminated according to the laws
10 of this state or of another jurisdiction; or

11 (c) the living parents, guardian authorized by the court, or department or agency with custody of
12 the child consent to the adoption.

13 (2) An adult may be adopted as provided in [sections 121 through 125].

14 (3) A stepchild may be adopted as provided in [sections 112 through 120].

15
16 **NEW SECTION. Section 6. Who may adopt.** The following individuals who otherwise meet the
17 requirements of [sections 1 through 156] are eligible to adopt a child:

18 (1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the
19 child;

20 (2) an unmarried individual who is at least 18 years of age; or

21 (3) a married individual at least 18 years of age who is legally separated from the other spouse or
22 whose spouse has judicially been declared incompetent.

23
24 **NEW SECTION. Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree
25 may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

26 (2) A child may be placed for adoption only by:

27 (a) the department or another agency to which the child has been relinquished for purposes of
28 adoption;

29 (b) the department or another agency expressly authorized to place the child for adoption by a
30 court order terminating the relationship between the child and the child's parent or guardian;

1 (c) the child's parents; or

2 (d) a guardian expressly authorized by the court to place the child for adoption.

3
4 **NEW SECTION. Section 8. Rights and responsibilities of parties in adoption proceedings.** (1) The
5 legislature finds that the rights and interests of all parties affected by an adoption proceeding must be
6 considered and balanced in determining the necessary constitutional protection and appropriate processes.

7 (2) The legislature finds that:

8 (a) every child deserves to be raised by a family in which support and care are promptly provided
9 by one or more parents in a nurturing environment on a regular and ongoing basis;

10 (b) the state has a compelling interest in providing stable and permanent homes for adoptive
11 children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents
12 accountable for meeting the needs of children;

13 (c) an unmarried mother, faced with the responsibility of making crucial decisions about the future
14 of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding
15 the mother's future and the future of the child, and is entitled to assurance regarding the permanence of
16 an adoptive placement;

17 (d) adoptive children have a right to permanence and stability in adoptive placements;

18 (e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining
19 custody of an adopted child; and

20 (f) a birth father who is not married to the child's mother has the primary responsibility to protect
21 the father's rights. The father's inchoate interest in the child requires constitutional protection only when
22 the father has demonstrated a timely and full commitment to the responsibilities of parenthood, both during
23 pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to
24 demonstrate that commitment by:

25 (i) timely and consistently providing financial support;

26 (ii) complying with the requirements of the putative father registry; and

27 (iii) demonstrating the establishment of a substantial relationship with the child as described in
28 [section 73].

29 (3) If a birth father who is not married to the child's mother fails to grasp the opportunities that
30 are available to the father to establish a relationship with the child, the father's parental rights will be lost

entirely by the failure to timely exercise it or by the failure to strictly comply with the available legal steps to substantiate the parental interest.

NEW SECTION. Section 9. Need for finality -- balancing of interests. Finality is necessary in order to facilitate the state's compelling interest. The legislature finds that the interests of the state, the mother, the child, and the adoptive parents outweigh the interest of a birth father who is not married to the child's mother and who does not timely grasp the opportunities available to establish and demonstrate a relationship with the father's child in accordance with the requirements of the putative father registry.

NEW SECTION. Section 10. Presumed knowledge that child may be adopted without notice. A birth father who is not married to the mother of the child is presumed to know that the child may be adopted without the father's consent and without notice to the father unless the father strictly complies with the provisions of [sections 1 through 156] and manifests a prompt and full commitment to the father's parental responsibilities.

NEW SECTION. Section 11. Unmarried birth mother's right of privacy. An unmarried birth mother has a right of privacy with regard to the mother's pregnancy and adoption plan and therefore has no legal obligation to disclose the identity of the birth father of the child prior to or during an adoption proceeding. The mother does not have an obligation to volunteer information to the court with respect to a potential birth father who is not married to the mother.

NEW SECTION. Section 12. Recognition of adoption in another jurisdiction. (1) A decree or order of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree or order is:

- (a) issued by a court of any other state that is entitled to full faith and credit in this state; or
- (b) entered by a court or administrative entity in another country acting pursuant to:
 - (i) that country's law; or
 - (ii) to any convention or treaty on intercountry adoption that the United States has ratified.

(2) The rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree or order were issued by a court of this state.

NEW SECTION. Section 13. Proceedings subject to Indian Child Welfare Act. A proceeding under [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., is subject to that act.

NEW SECTION. Section 14. Interstate placement. The Interstate Compact on the Placement of Children, Title 41, chapter 4, governs:

- (1) an adoption in this state of a child brought into this state from another state by a prospective adoptive parent;
- (2) a person residing in or an agency doing business from another state who places the child for adoption in this state; and
- (3) the placement of a Montana child in another state.

NEW SECTION. Section 15. International placement. An adoption in this state of a child brought into this state from another country by a prospective adoptive parent or by a person who places the child for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty governing adoption that the United States has ratified and to any relevant federal law.

NEW SECTION. Section 16. Fees for services -- special revenue account -- statutory appropriation.

(1) The department shall establish fees that it may charge and that are reasonably related to the cost incurred by the department in completing or contracting for adoption services.

(2) The department may contract with licensed social workers or licensed child-placing agencies for the purposes of completing the preplacement or postplacement evaluation or for providing postplacement supervision.

(3) An agency contracting to perform the services may set and charge a reasonable fee commensurate with the services provided.

(4) There is an adoption services account in the state special revenue fund. The fees collected by the department under [sections 1 through 156] must be deposited into this account and may be used by the department for adoption services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.

1 **NEW SECTION. Section 17. Rulemaking authority.** The department may adopt rules to implement
2 the administration and purposes of [sections 1 through 156].

3
4 **NEW SECTION. Section 18. Definitions.** As used in [sections 18 through 38], unless the context
5 requires otherwise, the following definitions apply:

6 (1) "Child" includes an unborn child.

7 (2) (a) "Putative father" means an individual who may be a child's birth father but who:

8 (i) is not married to the child's mother on or before the date that the child is born; or

9 (ii) has not established paternity of the child in a court proceeding prior to the filing of a petition for
10 termination of parental rights to the child for purposes of adoption.

11 (b) The term includes an individual who is:

12 (i) less than 18 years of age; and

13 (ii) not married to the child's mother even though the individual is a presumed father within the
14 meaning of 40-6-105.

15 (3) "Registry" means the putative father registry established under [section 19].

16
17 **NEW SECTION. Section 19. Putative father registry.** The putative father registry is established
18 within the vital statistics bureau of the department. The department shall adopt rules to administer the
19 registry.

20
21 **NEW SECTION. Section 20. Purpose of registry.** (1) The purpose of the putative father registry
22 is to provide notice of adoption proceedings to a putative father who asserts a parental interest in a child
23 so that the putative father may appear in an adoption proceeding and have an opportunity to establish that
24 the putative father's inchoate rights in the child have vested because a substantial relationship with the
25 child has been established as provided in [section 73].

26 (2) A putative father of a child who complies with the requirements of the putative father registry
27 is entitled to notice of any adoption proceedings involving the child.

28
29 **NEW SECTION. Section 21. Presumed knowledge of pregnancy -- duty to register to be afforded**
30 **notice -- putative and presumed fathers.** (1) A person who engages in sexual relations with a member of

the opposite sex is presumed to know that a pregnancy could result.

(2) A putative father is not entitled to notice of termination of parental rights proceedings for the purposes of adoption unless the putative father has strictly complied with the requirements of the putative father registry.

(3) An individual who is not married to the mother but who is presumed to be a father under 40-6-105 is not relieved from the obligation of registering in accordance with [sections 18 through 38] in order to receive notice of a termination of parental rights proceeding for a child for whom the individual may be the presumed father.

NEW SECTION. Section 22. Registration. (1) A putative father is entitled to notice of any adoption proceedings involving a child whom the putative father might have fathered if the putative father timely files the following information with the department:

(a) the putative father's:

(i) full name;

(ii) address at which the putative father may be served by certified mail, return receipt requested, with notice of a proceeding to terminate parental rights;

(iii) social security number;

(iv) date of birth; and

(v) tribal affiliation if applicable;

(b) the mother's:

(i) name, including all other names known to the putative father that the mother uses; and

(ii) address, social security number, and date of birth, if known;

(c) the child's:

(i) name and place of birth, if known; or

(ii) the approximate date and location of conception and the approximate expected date of delivery.

(2) If a putative father does not have an address where the putative father can receive notice of a termination of parental rights proceeding, the putative father may designate another person as an agent for the purpose of receiving notice. The putative father shall provide the department with the agent's name and the address at which the agent may be served. Service of notice by certified mail, return receipt requested, constitutes service of notice upon the putative father.

(3) A putative father shall register under this section on a registration form prescribed by the department or with a legibly typed or handwritten statement that provides the required information and that is submitted to the department pursuant to [section 24]. The registration must be signed by the putative father and notarized.

(4) A putative father who registers under this section is responsible for providing written updates regarding any change of the putative father's name or address.

NEW SECTION. Section 23. When putative father to register -- actual knowledge of pregnancy not required. (1) In order to be entitled to receive notice of a termination of parental rights proceeding, a putative father's registration form complying with the requirements of [section 22] must be received by the department not later than close of business on the date of the child's birth.

(2) A putative father may file all information required by [section 22] before a child's birth even though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has continued through gestation.

NEW SECTION. Section 24. How registration submitted. A putative father shall submit a registration form:

(1) in person; or

(2) by facsimile transmission, mail, private courier, or express delivery service.

NEW SECTION. Section 25. Burden of putative father to preserve rights upon receipt of notice. When a putative father receives notice that a child in whom the putative father claims a parental interest is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out in [section 73] for determining whether the putative father has made reasonable efforts to establish a substantial relationship with the child who is the subject of the proceedings have been met.

NEW SECTION. Section 26. Presumption created -- admissibility in other proceedings. A person filing a registration form is presumed to be the father of the child for purposes of adoption unless the mother denies that the registrant is the father. The registration or any revocation that is filed is admissible

in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of the child for purposes of 40-6-107. The registration creates a rebuttable presumption as to paternity of the child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support enforcement action under Title 40, chapter 5.

NEW SECTION. Section 27. Duties of department. (1) The department shall:

(a) prescribe a registration form for the information that a putative father submits under [section 22]; and

(b) make the registration forms available through:

(i) the department;

(ii) each clerk of a district court;

(iii) each local health department; and

(iv) each county clerk and recorder.

(2) A notice provided by the department that informs the public about the purpose and operation of the registry must be posted in a conspicuous place by each:

(a) clerk of a district court;

(b) driver's examination station of the motor vehicle division of the department of justice;

(c) local health department; and

(d) county clerk and recorder.

(3) The title and registration bureau of the motor vehicle division of the department of justice and the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The department shall provide the copies of the notices to the title and registration bureau and the county treasurers.

(4) The notice under subsection (2) must include information regarding:

(a) where to obtain a registration form;

(b) where to register;

(c) the circumstances under which a putative father is required to register;

(d) the period under [section 23] during which a putative father is required to register in order to entitle the putative father to receive notice of a proceeding to terminate parental rights;

- 1 (e) the information that must be provided for the registry and what other actions the putative father
2 is required to take to preserve a right to notice;
- 3 (f) the consequences of not submitting a timely registration; and
4 (g) the penalties for filing a false claim with the putative father registry.

5
6 **NEW SECTION. Section 28. Duties of department.** (1) The department shall:

7 (a) prescribe a registration form for the information that a putative father submits under [section
8 22]; and

9 (b) make the registration forms available through:

- 10 (i) the department;
11 (ii) each clerk of a district court; and
12 (iii) each local health department.

13 (2) A notice provided by the department that informs the public about the purpose and operation
14 of the registry must be posted in a conspicuous place by each:

- 15 (a) clerk of a district court;
16 (b) driver's examination station of the motor vehicle division of the department of justice;
17 (c) local health department; and
18 (d) county clerk and recorder.

19 (3) The notice under subsection (2) must include information regarding:

- 20 (a) where to obtain a registration form;
21 (b) where to register;
22 (c) the circumstances under which a putative father is required to register;
23 (d) the period under [section 23] during which a putative father is required to register in order to
24 entitle the putative father to receive notice of an adoption;

25 (e) the information that must be provided for the registry and what other actions the putative father
26 is required to take to preserve a right to notice;

- 27 (f) the consequences of not submitting a timely registration; and
28 (g) the penalties for filing a false claim with the putative father registry.

29
30 **NEW SECTION. Section 29. Information maintained in registry.** The department shall maintain the

following information in the registry:

- (1) the registration information provided by the putative father under [section 22];
- (2) the date that the department receives a putative father's registration;
- (3) the name and affiliation of any person who requests that the department search the registry to determine whether a putative father is registered in relation to a mother whose child is or may be the subject of a termination proceeding and the date the request is submitted; and
- (4) any other information that the department determines is necessary to access the information in the registry.

NEW SECTION. Section 30. Storage of data. The department shall store the registry's data in a manner so that the data is accessible through:

- (1) the putative father's name;
- (2) the mother's name;
- (3) the date of birth of the putative father, the mother, and the child, if known;
- (4) the child's name, if known; and
- (5) the social security number for the putative father, the mother, and the child, if known.

NEW SECTION. Section 31. Registry search -- request -- affidavit. (1) The following persons may at any time request that the department search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

- (a) a representative of the department;
- (b) a representative of an agency when the agency is or may be arranging an adoption;
- (c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother; or
- (d) any woman who is the subject of a registration.

(2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner shall:

- (a) request that the department search the registry at least 1 day after the expiration of the period specified under [section 23]; and
- (b) file an affidavit prepared by the department in response to a request under subsection (2)(a)

1 with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit
2 must meet the requirements of subsections (4) and (5).

3 (3) A request for information about a registration from the department must be in writing.

4 (4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall
5 submit an affidavit to the requestor verifying whether a putative father has registered within the period
6 allowed under [section 23] in relation to a mother whose child or expected child is the subject of the
7 termination proceeding.

8 (5) Whenever the department finds that one or more putative fathers are registered, the department
9 shall:

10 (a) submit a copy of each registration form with the department's affidavit; and

11 (b) include in the affidavit the date that the department representative, agency, or attorney
12 submitted the request for the search.

13 (6) A court may not issue an order terminating parental rights unless the department's affidavit
14 under subsection (5) is filed with the court.

15

16 **NEW SECTION. Section 32. Duties of department upon receipt of request.** (1) Whenever the
17 department receives a request, the department shall:

18 (a) search its records of putative father registrations and search its records for any
19 acknowledgement of paternity filed pursuant to 40-6-105; and

20 (b) notify the requestor as to whether a paternity action has been filed and a paternity order issued
21 to the department pursuant to 40-6-116 requiring the issuance of a new birth certificate concerning a child
22 who is or may be the subject of an adoption that the attorney or agency is arranging.

23 (2) The department may charge a reasonable fee for responding to a request under this section.

24

25 **NEW SECTION. Section 33. Failure to register -- irrevocable implied consent -- fraud.** (1) A
26 putative father who fails to register within the period specified under [section 23] waives notice of a
27 termination proceeding.

28 (2) The putative father's waiver under subsection (1) constitutes an irrevocable implied consent
29 to the child's adoption.

30 (3) Failure of an agency to post a proper notice under [section 27] does not relieve a putative father

of the obligation to register with the department in accordance with the putative father registry in order to entitle the putative father to notice of proceedings involving a child who may have been fathered by the putative father.

NEW SECTION. Section 34. Revocation of registration. A putative father may revoke a registration at any time by submitting to the department a signed, notarized statement revoking the registration.

NEW SECTION. Section 35. Certified copy of registration form to be furnished upon request. The department shall furnish a certified copy of the putative father's registration form upon written request by:

- (1) a putative father whose name appears on the registration form being requested;
- (2) a mother whose name appears on the registration form being requested;
- (3) upon reaching majority, a person who was the subject of a registration;
- (4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother;
- (5) a licensed child-placing agency;
- (6) a court that presides over a pending adoption;
- (7) the child support enforcement division of the department; or
- (8) a representative of the department involved in an adoption or a neglect and dependency proceeding under Title 41, chapter 3.

NEW SECTION. Section 36. Information confidential. Except as otherwise provided in [sections 18 through 38], information contained within the registry is confidential.

NEW SECTION. Section 37. Registration of false information -- criminal and civil penalties. A person who purposely or knowingly registers false information or requests confidential information in violation of a putative father registry commits a misdemeanor and may be civilly liable for damages.

NEW SECTION. Section 38. Responsibility of each party to protect interests -- putative fathers -- fraud no defense. (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation

in adoption proceedings and has provided a method for absolute protection of a putative father's rights by compliance with the provisions of the putative father registry. In balancing the rights and interests of the state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative father, the legislature determines that the putative father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of establishing fraud by clear and convincing evidence must be born by the putative father.

(2) Each parent of a child conceived or born outside of marriage to the other parent is responsible for that parent's own actions and assertion of their parental rights notwithstanding any action, statement, or omission of the other parent or third parties.

(3) A person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to strictly comply with the requirements of the putative father registry and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

(4) A putative father who resides in another state may contest an adoption prior to issuance of a decree of adoption and may assert the putative father's interest in the child. If the adoption is contested, the court shall hold an evidentiary hearing to determine if:

(a) the putative father resides and has resided in another state where the unmarried mother lived or resided either at the time of conception or through a portion of the pregnancy;

(b) the mother left that state, concealing the location from the putative father regarding where the mother could be contacted or located;

(c) the father has, through every reasonable means, attempted to locate the mother but has been unable to do so; and

(d) the putative father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located in order to protect and preserve the putative father's parental interest and rights concerning the child in cases of adoption.

NEW SECTION. **Section 39. Consent required.** An adoption of a child may be decreed when written consents to adoption have been executed by:

(1) the birth mother;

(2) the husband of the birth mother if the husband is the presumed father of the child under

1 40-6-105;

2 (3) any other person whose parental rights have been established by a court;

3 (4) the department or an agency that has custody of the child and the authority to place the child
4 for adoption;

5 (5) the legal guardian of the child if both parents are dead or their rights have been judicially
6 terminated and the guardian has authority by order of the court appointing the guardian to consent to the
7 adoption;

8 (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child
9 does not have the mental capacity to consent.

10
11 **NEW SECTION. Section 40. Persons whose consent not required.** Consent to adoption of a child
12 is not required from:

13 (1) an individual whose parental relationship to the child has been judicially terminated for unfitness
14 or has been determined not to exist or who has waived parental rights;

15 (2) a parent who has been judicially declared incompetent;

16 (3) an individual who has not been married to the mother of the child and who, after the
17 conception of the child, executes a notarized statement denying paternity or a notarized statement
18 acknowledging paternity and denying any interest in the child; or

19 (4) the personal representative of a deceased parent's estate.

20
21 **NEW SECTION. Section 41. Form of consent.** The consents required by [section 39] must be
22 acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of
23 the department, an agency, or the court.

24
25 **NEW SECTION. Section 42. Child available for adoption -- voluntary acts of parents.** A parent may
26 voluntarily make a child available for adoption by:

27 (1) executing a voluntary relinquishment and consent to adoption;

28 (2) executing a denial of paternity; or

29 (3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of
30 the child.

NEW SECTION. Section 43. Voluntary relinquishment -- validity. (1) A voluntary relinquishment

is not valid unless the parent specifically relinquishes custody of the child to the department, a licensed child-placing agency, or a specifically identified prospective adoptive parent and:

(a) the department or agency to whom the child is being relinquished has agreed in writing to accept custody of the child until the child is adopted; or

(b) the identified prospective adoptive parent has agreed in writing to accept temporary custody and to provide support and care to the child until that person's adoption petition is granted or denied.

(2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve the parent executing the relinquishment of any duty owed to the child.

NEW SECTION. Section 44. Arrearages of child support -- responsibility to child. (1) A voluntary

relinquishment of a parent's rights and responsibilities toward a child do not cancel any responsibility to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to waive the payment of the arrearages.

(2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child remains financially responsible for the child until a court actually terminates parental rights to the child.

NEW SECTION. Section 45. Who may relinquish -- to whom. (1) A parent or guardian whose

consent to the adoption of a child is required may relinquish to the department or an agency all rights with respect to the child, including legal and physical custody and the right to consent to the child's adoption.

(2) A parent or guardian whose consent to the adoption of a child is required and who has filed a notice of parental placement under [section 95] for a direct parental placement adoption may:

(a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal and physical custody; and

(b) consent to the child's adoption by the prospective adoptive parents.

NEW SECTION. Section 46. Relinquishment by minor parent -- separate legal counsel in direct

parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the limitations in [section 148].

NEW SECTION. Section 47. Time and prerequisites for execution of relinquishment and consent to adoption -- copy of preplacement evaluation -- notarization. (1) A parent whose consent to the adoption of a child is required may execute a relinquishment and consent to adoption only after the following criteria have been met:

(a) the child has been born;

(b) not less than 72 hours have elapsed since the birth of the child if the person relinquishing parental rights is the child's birth mother;

(c) the parent has received counseling in accordance with [section 48]; and

(d) in a direct parental placement adoption:

(i) the parent has been informed that fees for any required counseling and legal fees are allowable expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations set in [section 148];

(ii) if the parent is a minor, the parent has been represented by separate legal counsel; and

(iii) prior to the execution of the relinquishment, the parent has been provided a copy of the preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

(2) A guardian may execute a relinquishment and consent to adopt at any time after being authorized by a court.

(3) The department or a licensed child-placing agency may execute a consent for the adoption at any time before or during the hearing on the petition for adoption.

(4) A child whose consent is required may execute a consent at any time before or during the hearing on the petition to adopt.

(5) Except as provided in this section, a relinquishment and consent to adopt must be a separate instrument executed before a notary public.

(6) If the person from whom a relinquishment and consent to adopt is required is a member of the

1 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
2 authorized by law to administer oaths.

3
4 **NEW SECTION. Section 48. Counseling requirements.** (1) Counseling of the birth mother is
5 required in department, agency, and direct parental placement adoptions. If any other parent is involved
6 in an adoptive placement, counseling of that parent is encouraged.

7 (2) Counseling must be performed by a person employed by the department or by a staff person
8 of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling
9 requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed
10 prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and
11 consent to adopt executed prior to completion of required counseling is void.

12 (3) During counseling, the counselor shall offer an explanation of:

13 (a) adoption procedures and options that are available to a parent through the department or
14 licensed child-placing agencies;

15 (b) adoption procedures and options that are available to a parent through direct parental placement
16 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be
17 paid by a prospective adoptive parent as provided in [sections 147 and 148];

18 (c) the alternative of parenting rather than relinquishing the child for adoption;

19 (d) the resources that are available to provide assistance or support for the parent and the child
20 if the parent chooses not to relinquish the child;

21 (e) the legal and personal effect and impact of terminating parental rights and of adoption;

22 (f) the options for contact and communication between the birth family and the adoptive family;

23 (g) postadoptive issues, including grief and loss;

24 (h) the reasons for and importance of providing accurate medical and social history information
25 under [section 81];

26 (i) the operation of the confidential intermediary program; and

27 (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon
28 request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the
29 vital statistics bureau withhold release of the original birth certificate.

30 (4) The counselor shall prepare a written report containing a description of the topics covered and

the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report may be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents.

NEW SECTION. Section 49. Revocation of relinquishment and consent. (1) The parent who executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation prior to the issuance of an order terminating parental rights.

(2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

NEW SECTION. Section 50. Conditional relinquishment and consent. (1) A relinquishment and consent to adopt may provide that it not take effect only if:

(a) the other parent does not execute a relinquishment and consent to adopt within a specified period; or

(b) a court decides to not terminate another individual's parental relationship to the child.

(2) A relinquishment and consent to adopt may not be conditioned on whether or not existing agreements for matters, including but not limited to visitation and ongoing communication with the child, are later performed.

NEW SECTION. Section 51. Content of relinquishment and consent to adopt. (1) A relinquishment and consent to adopt must be in writing and must contain:

(a) the date, place, and time of the execution of relinquishment and consent to adopt;

(b) the name, date of birth, and current mailing address of the individual executing the relinquishment and consent to adopt;

(c) the date of birth and the name of the child to be adopted; and

(d) the name, address, and telephone numbers of the department or agency to which the child is being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment and consent has placed or intends to place the child for adoption.

(2) A relinquishment and consent to adopt executed by a parent or guardian must state that the parent or guardian executing the document is voluntarily and unequivocally consenting to the:

(a) permanent transfer of legal and physical custody of the child to the department or agency for the purposes of adoption; or

(b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific identified adoptive parent whom the parent or guardian has selected.

(3) A relinquishment and consent to adopt must state:

(a) that after the document is signed or confirmed in substantial compliance with this section, it is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and consent to adopt to visit or communicate with the child;

(b) that the adoption will extinguish all parental rights and obligations that the individual executing the relinquishment and consent to adopt has with respect to the child, except for arrearages of child support unless the arrearages are waived by the person to whom they are owed, and that the relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed;

(c) that the individual executing the relinquishment and consent to adoption has:

(i) received a copy of the relinquishment and consent to adoption;

(ii) received a copy of a written agreement by the department, agency, or prospective adoptive parent to accept temporary custody and to provide support and care to the child until an adoption petition is granted or denied;

(iii) if required, received counseling services and information about adoption pursuant to [section 48] explaining the meaning and consequences of an adoption;

(d) in direct parental placement adoptions, that the individual has:

(i) been advised if the individual is:

(A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which the child is being relinquished; or

(B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency and whose fees are allowable expenses that can be paid by the prospective adoptive parents;

(ii) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

(e) in agency and direct parental placement adoptions, that the individual has:

(i) been advised of the obligation to provide the medical and social history information required under [section 81] pertaining to disclosures; and

(ii) not received or been promised any money or anything of value for execution of the relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

(4) A relinquishment and consent to adopt must provide that the individual who is relinquishing waives notice of any proceeding for adoption.

NEW SECTION. Section 52. Consequences of relinquishment and consent to adopt. Except under a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is executed by a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The relinquishment and consent to adopt:

(1) unless a court orders otherwise to protect the welfare of the child, entitles the department, agency, or prospective adoptive parent named or described to the legal and physical custody of the child and imposes on that department, agency, or prospective adoptive parent responsibility for the support and medical and other care of the child;

(2) terminates any duty of the parent who executed the document with respect to the child except for arrearages of child support; and

(3) terminates any right of the parent or guardian who executed the document to:

(a) object to the placement of the child for adoption by the department or agency;

(b) object to the child's adoption by the prospective adoptive parent; and

(c) notice of the proceeding for adoption.

NEW SECTION. Section 53. Grounds for court to set aside relinquishment and consent. (1) The court shall set aside a relinquishment and consent to adopt if the individual who executed the relinquishment and consent establishes:

(a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was obtained by fraud or duress; or

(b) by a preponderance of the evidence, that a condition permitting revocation has occurred, as expressly provided for in [section 50].

(2) A verbatim record of testimony must be made.

NEW SECTION. Section 54. Remedy when relinquishment and consent to adopt revoked or set aside -- expediency. (1) If a relinquishment and consent to adopt that was executed by an individual is revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the child to the individual's custody and move to dismiss a proceeding for adoption or termination of the individual's parental rights to the child unless:

(a) the department has legal custody pursuant to a court order;

(b) there are grounds for the department to seek a court order under the provisions of Title 41, chapter 3; or

(c) the individual did not have legal custody of the child at the time the relinquishment and consent to adopt was executed.

(2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no existing court order providing for care and custody, the court shall issue an order providing for the care and custody of the child according to the best interests of the child under any law applicable to the circumstances of the case.

(3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment or consent a child is not returned immediately by the department, agency, or prospective adoptive parent, the individual may petition the court for appropriate relief. The action must take precedence over other cases and matters in the court. The court shall examine the petition, hear the case, and render a decision as soon as possible.

NEW SECTION. Section 55. Notarized denial of paternity -- no entitlement to notice. (1) Execution of a notarized denial of paternity of a child is a voluntary act that constitutes a waiver of all parental rights to the child.

(2) A notarized denial of paternity is irrevocable when executed. An individual who has executed a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of either the hearing to terminate parental rights or the hearing on an adoption petition.

NEW SECTION. Section 56. Notarized acknowledgment of paternity and denial of interest in

1 **custody -- no entitlement to notice.** (1) Submission of a notarized acknowledgment of paternity and a
2 denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental
3 rights to the child.

4 (2) An individual who has executed an acknowledgment of paternity and denial of interest in the
5 custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing
6 to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the
7 acknowledgment of paternity and denial of interest in custody, the individual has strictly complied with all
8 of the requirements of [section 22] and has done so within the time limits established in [section 23].
9

10 **NEW SECTION. Section 57. Timing of proceedings to terminate.** (1) In order to provide notice
11 to a putative father at the earliest possible time of an expectant mother's intent to release an expected child
12 for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may
13 initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption
14 prior to the birth of the child.

15 (2) A petition to terminate parental rights may also be filed after a child is born.
16

17 **NEW SECTION. Section 58. Expected child -- filing of petition indicating intent to release or**
18 **consent to adoption.** (1) A pregnant individual may file a petition with the court indicating the intention to
19 place an expected child for adoption.

20 (2) The petition must include the following information:

21 (a) the individual's intent to release the expected child for adoption;

22 (b) the approximate date and location of conception;

23 (c) the expected date of delivery;

24 (d) any information concerning the identity and whereabouts of any putative or presumed father
25 of the expected child unless the birth mother relies on the right to privacy; and

26 (e) in a situation in which there is a presumed father, the grounds upon which the individual relies
27 in contending that the nonexistence of the father and child relationship can be established in an action
28 brought under 40-6-107.

29 (3) The petition may allege more than one putative or presumed father.

30 (4) The petition must be signed by the petitioner and notarized.

NEW SECTION. Section 59. Notice to any named father of intent to release child for adoption.

(1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a child for adoption.

(2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth of the child. Proof of service must be filed with the court.

(3) A notice of intent to release directed to a putative father must indicate the approximate date and location of conception of the child and the expected date of birth and must inform the putative father that:

(a) in order to protect the putative father's rights to the child, the putative father is required to file notice of intent to claim paternity before the expected date of birth;

(b) the putative father is required to appear at the hearing at the time and date set by the court;

(c) the failure to file notice of intent to claim paternity before the expected date of birth:

(i) constitutes a waiver of the right to receive the notice provided for in [section 22];

(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

(iii) will result in the court's termination of the putative father's rights to the child.

(4) In addition to the information contained in subsection (3), a notice of intent to release directed to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds for seeking the declaration.

NEW SECTION. Section 60. Notice to any named father of intent to release child for adoption.

(1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a child for adoption.

(2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth of the child. Proof of service must be filed with the court.

(3) A notice of intent to release directed to a putative father must indicate the approximate date and location of conception of the child and the expected date of birth and must inform the putative father:

(a) that in order to protect the putative father's rights to the child, the putative father is required

to register with the putative father registry as of the close of business on the expected date of birth of the child;

(b) that the putative father is required to appear at the hearing at the time and date set by the court;

(c) of the rights and responsibilities to which the putative father will be entitled upon registering with the putative father registry; and

(d) that the failure to comply with all requirements of filing with the putative father registry before the expected date of birth:

(i) constitutes a waiver of the right to receive the notice provided for in [section 22];

(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

(iii) will result in the court's termination of the putative father's rights to the child.

(4) In addition to the information contained in subsection (3), a notice of intent to release directed to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds for seeking the declaration.

NEW SECTION. Section 61. Venue. Proceedings to terminate parental rights may be filed in the court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing the child is located.

NEW SECTION. Section 62. Necessity for parental rights to be terminated. A child is not legally free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

(1) as provided in [sections 1 through 156];

(2) pursuant to Title 41, chapter 3; or

(3) of competent jurisdiction in another state or country.

NEW SECTION. Section 63. Petition for termination of parental rights. (1) Pending the termination or other disposition of the rights of the father of the child, the birth mother may execute a relinquishment and consent to adoption.

(2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and

1 notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title
2 41, chapter 3.

3 (3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned
4 as set forth in [section 50].

5 (4) Pending disposition of the petition, the court may enter an order authorizing temporary care of
6 the child.

7

8 **NEW SECTION. Section 64. Contents of petition for termination of parental rights.** (1) The
9 petition for termination of parental rights must state:

10 (a) the identity of the petitioner;

11 (b) the date and location of the birth of the child;

12 (c) the date of the relinquishment by the birth mother or relinquishing parent;

13 (d) the current location of the child;

14 (e) the names and locations, if known, of any putative or presumed father of the child;

15 (f) efforts and inquiries made to locate any parent whose identity is known but whose whereabouts
16 are unknown;

17 (g) the grounds on which the parental rights of any putative or presumed father to the child should
18 be terminated;

19 (h) whether a putative or presumed father is one from whom consent is not required;

20 (i) whether court orders from any other proceeding have been issued terminating parental rights
21 to the child who is the subject of the petition;

22 (j) any other evidence supporting termination of the legal rights that a person has with regard to
23 the child; and

24 (k) a request for custody of the child prior to the adoption.

25 (2) The petitioner shall file with the petition for termination of parental rights the following
26 documents received in support of the petition:

27 (a) any relinquishments and consents to adoption;

28 (b) any denials of paternity;

29 (c) any acknowledgments of paternity and denial of parental rights;

30 (d) any response from the department to a request of whether any notice of intent to claim

1 paternity has been filed;

2 (e) a counseling report required under [section 48]; and

3 (f) proof of service of any notice or acknowledgement of service or waiver of service received.

4
5 **NEW SECTION. Section 65. Contents of petition for termination of parental rights.** (1) The
6 petition for termination of parental rights must state:

7 (a) the identity of the petitioner;

8 (b) the date and location of the birth of the child;

9 (c) the date of the relinquishment by the birth mother or relinquishing parent;

10 (d) the current location of the child;

11 (e) the names and locations, if known, of any putative or presumed father of the child;

12 (f) whether a parent is one from whom consent is not required;

13 (g) whether court orders from any other proceeding have been issued terminating parental rights
14 to the child that is the subject of the petition;

15 (h) any other evidence supporting termination of the legal rights that a person has with regard to
16 the child; and

17 (i) a request for temporary custody of the child prior to the adoption.

18 (2) The petitioner shall file with the petition for termination of parental rights the following
19 documents received in support of the petition:

20 (a) any relinquishments and consents to adoption;

21 (b) any denials of paternity;

22 (c) any acknowledgments of paternity and denial of parental rights;

23 (d) any affidavits from the putative father registry that have been executed by the department;

24 (e) a counseling report required under [section 48]; and

25 (f) proof of service of any notice or acknowledgement of service or waiver of service received.

26
27 **NEW SECTION. Section 66. Notice of hearing -- service.** (1) Notice of a hearing to be held on
28 the petition for termination of parental rights must be served in any manner appropriate under the Montana
29 Rules of Civil Procedure or in any manner that the court may direct on:

30 (a) a putative or presumed father;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(c) a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth;

(d) a parent or legal guardian of the child in question who has not waived notice; or

(e) any other person who is reasonably believed to be the father.

(2) The notice of hearing must inform the putative or presumed father that failure to appear at the hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's termination of the individual's rights to the child.

(3) Proof of service of the notice of hearing must be filed with the court. A notarized acknowledgement of service by the party to be served is proof of personal service. Proof of service is not required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual entitled to receive notice is sufficient.

(4) If a person has not been identified as the father or putative father of the child, the court, on the basis of all information available, shall determine whether publication of notice of the proceeding is likely to lead to identification. If so, the court shall order publication in the manner that it considers appropriate. The name of the birth mother may be included in the publication only with the mother's written consent.

(5) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who has not waived the right to notice of hearing and that person is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

NEW SECTION. Section 67. Notice of hearing -- service. (1) Notice of a hearing to be held on the petition for termination of parental rights must be served in any manner appropriate under the Montana Rules of Civil Procedure or in any manner that the court may direct on:

(a) a putative or presumed father who has timely and properly complied with the putative father registry;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(c) a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth; or

(d) a parent or legal guardian of the child in question who has not waived notice.

(2) The notice of hearing must inform the putative or presumed father or other parent that failure to appear at the hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's termination of the individual's rights to the child.

(3) Proof of service of the notice of hearing must be filed with the court. A notarized acknowledgement of service by the party to be served is proof of personal service. Proof of service is not required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual entitled to receive notice is sufficient.

(4) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who has not waived the right to notice of hearing and that person is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

NEW SECTION. Section 68. Hearing on petition to terminate parental rights. (1) The court shall hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the father of the child.

(2) If the mother has failed to name a putative father and no one has filed notice of intent to claim paternity, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must include whether the mother was married at the time of conception of the child or at any time after conception.

(3) Based on the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father could not be determined.

(4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the court shall enter an order concerning the parental rights to the child.

(5) If the court terminates the parental rights to the child and the department, agency, or prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court shall issue an order awarding custody of the child to the petitioner.

NEW SECTION. Section 69. Hearing on petition to terminate parental rights. (1) The court shall hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the father of the child.

(2) If the mother has failed to name a putative father and no one has registered with the putative father registry, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must include:

(a) whether the mother:

(i) was married at the time of conception of the child or at any time after conception;

(ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the child; and

(iii) has received support payments or promises of support payments for the child or in connection with the pregnancy; and

(b) whether any person formally or informally acknowledged possible paternity to the child.

(3) Based on the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father could not be determined.

(4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the court shall enter an order concerning the parental rights to the child.

(5) If the court terminates the parental rights to the child and the department, agency, or prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court shall issue an order awarding custody of the child to the petitioner.

NEW SECTION. Section 70. Grounds for termination of parental rights. The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

(b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

(c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the child executed pursuant to [section 56];

(2) a determination under [section 71] that the parent is unfit;

(3) a determination under [section 72] that the relationship of parent and child does not exist; or

(4) a determination that the parent has irrevocably waived parental rights by failing to timely act to protect the rights.

NEW SECTION. Section 71. Finding of unfitness. (1) The court may terminate parental rights for purposes of making a child available for adoption on the grounds of unfitness if:

(a) the court makes a determination that the parent has been judicially deprived of custody of the child on account of abuse or neglect toward the child;

(b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United States;

(c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

(d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to support either the child that is the subject of the adoption proceedings or other children with the same birth mother;

(e) the parent has been found guilty by a court of competent jurisdiction of:

(i) aggravated assault on the adoptee, as provided in 45-5-202;

(ii) sexual assault on a child, as provided in 45-5-502;

(iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

(iv) incest, as provided in 45-5-507, if the victim was a child;

(v) homicide of a child, as provided in 45-5-102 or 45-5-103;

(vi) sexual abuse of a child, as provided in 45-5-625; or

(vii) ritual abuse of a minor, as provided in 45-5-627;

(f) the child has been maintained by a public or private children's institution, a charitable agency, a licensed child-placing agency, or the department for a period of 1 year without the parent contributing to the support of the child during that period, if able;

(g) a finding is made for a parent who is given proper notice of hearing:

(i) that the parent has been convicted of a crime of violence or of violating a restraining or protective order; and

(ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to

1 maintain a relationship of parent and child with the child;

2 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the
3 petition to terminate parental rights and:

4 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the
5 child; and

6 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

7 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is
8 not able or willing to promptly assume legal and physical custody of the child and to pay for the child's
9 support in accordance with the respondent's financial means;

10 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
11 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain
12 contact with the child and to pay for the child's support in accordance with the respondent's financial
13 means;

14 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial
15 harm to the physical or psychological well-being of the child because the circumstances of the child's
16 conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the
17 respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a
18 relationship of parent and child with the child; or

19 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

20 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant
21 factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the
22 role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability
23 to care for the child, the age of the child, the quality of any previous relationship between the respondent
24 and the child and between the respondent and any other children, the duration and suitability of the child's
25 present custodial environment, and the effect of a change of physical custody on the child.

26
27 **NEW SECTION. Section 72. Determination that no parent and child relationship exists.** For
28 purposes of making a child available for adoption, the court may terminate the parental rights of a putative
29 father on the grounds that the parent and child relationship does not exist if:

30 (1) a judicial determination is made under 40-6-107 that the parent and child relationship does not

exist. This includes the termination of the parental rights of the husband of the mother who is placing the child for adoption or the parental rights of an individual who is a presumed father of the child.

(2) a determination is made that:

(a) an individual has not timely registered with the putative father registry; and

(b) the child's mother was not married at the probable time of the child's conception or at the time the child was born; or

(3) a putative father who timely registered with the putative father registry appears at the hearing but is unable to establish by a preponderance of the evidence the minimum requirements provided in [section 73] for demonstrating the establishment of a substantial relationship with the child.

NEW SECTION. Section 73. Putative father -- termination based upon failure to establish substantial relationship. (1) The parental rights of a putative father may be terminated by the court if the putative father has failed to timely establish and maintain a substantial relationship with the child.

(2) A putative father who is not married to the child's mother but who has openly lived with the child for a period of 6 months immediately preceding placement of the child with adoptive parents and has openly claimed to be the father of the child during that period is considered to have developed a substantial relationship with the child and to have otherwise met the requirements of this section.

(3) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding occurring more than 6 months after the child's birth, a putative father has the burden of showing that the putative father has:

(a) demonstrated a full commitment to the responsibilities of parenthood, when not prevented from doing so by the person or authorized agency having lawful custody of the child, by providing financial support for the child in a fair and reasonable sum and in accordance with the putative father's ability and either:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially unable to do so; and

(b) manifested an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(4) In order to meet the minimal showing of having established a substantial relationship with

regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of age at the time the child becomes the subject of adoption proceedings, a putative father has the burden to show that:

(a) the putative father has manifested a full commitment to parental responsibilities by performing all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and consent for adoption, including registering with the putative father registry; and

(b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with the putative father's means when not prevented from doing so by the person or authorized agency having lawful custody of the child;

(c) making reasonable and consistent payments, in accordance with the putative father's means, for the support of the child since birth;

(d) visiting regularly with the child; and

(e) manifesting an ability and willingness to assume legal and physical custody of the child if, during this time, the child was not in the physical custody of the mother.

(5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by evidence of acts specified in this section does not preclude a determination that the father failed to meet the requirements of this section.

NEW SECTION. Section 74. Irrevocable waiver of parental rights. (1) The court may find an irrevocable waiver of parental rights of:

(a) a putative father who was timely served with notice of intent to release if the court is provided with proof of service and proof that the putative father failed to timely file a notice of intent to claim paternity;

(b) a parent or putative father who is served with notice of proceedings and fails to appear at the hearing; or

(c) a parent or putative father who is served with notice of proceedings and appears and denies any interest in custody of the child.

(2) The court may terminate parental rights under this section upon a finding of irrevocable waiver of all rights to the child.

1 **NEW SECTION.** **Section 75. Irrevocable waiver of parental rights.** (1) The court may find an
2 irrevocable waiver of parental rights of:

3 (a) a putative father who was timely served with notice of intent to release if the court is provided
4 with proof of service and proof that the putative father failed to timely comply with the requirements of the
5 putative father registry;

6 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
7 hearing; or

8 (c) a parent or putative father who is served with notice of proceedings and appears and denies
9 any interest in custody of the child.

10 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
11 of all rights to the child.

12
13 **NEW SECTION.** **Section 76. Appearance of parent at hearing -- determination of custody.** (1) If
14 a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of
15 rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete
16 discovery and shall set a hearing on the determination of the parent's rights to the child.

17 (2) At the hearing, the court shall consider whether there is a basis for terminating parental rights
18 and whether the best interests of the child will be served by granting custody to the respondent parent,
19 the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental
20 placement adoption.

21 (3) If the petitioner has established that there are grounds for terminating parental rights and it is
22 in the best interests of the child for termination to occur, those rights must be terminated.

23
24 **NEW SECTION.** **Section 77. Effect of order terminating parental rights.** An order granting the
25 petition for termination of parental rights:

26 (1) terminates the parent and child relationship except for an obligation for arrearages of child
27 support;

28 (2) terminates the jurisdiction of the court over the child in any dissolution or separate maintenance
29 action;

30 (3) extinguishes any right the parent had to withhold consent to a proposed adoption of the child

1 or to further notice of a proceeding for adoption; and

2 (4) awards custody of the child to the department, agency, or prospective adoptive parent to whom
3 the relinquishment was given if the department, agency, or prospective adoptive parent has agreed in
4 writing to accept custody of the child until the adoption is finalized.

5
6 **NEW SECTION. Section 78. Appeal.** An order terminating parental rights is a final order for
7 purposes of appeal.

8
9 **NEW SECTION. Section 79. Expediency.** A contested termination of parental rights action must
10 take precedence over other cases and matters in the court or on appeal. The court shall examine any issues
11 raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final
12 adoption decree and shall render a decision as soon as possible.

13
14 **NEW SECTION. Section 80. Finality.** Subject to the disposition of a timely appeal, upon expiration
15 of 6 months after an order terminating parental rights has been issued, the order may not be questioned
16 by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any
17 required notice, or lack of jurisdiction of the parties or the subject matter.

18
19 **NEW SECTION. Section 81. Duty to disclose information -- form -- availability -- filing.** (1) Except
20 for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent,
21 the department, or an agency shall provide a prospective adoptive parent with social and medical histories
22 of the birth families, including tribal affiliation, if applicable.

23 (2) In a direct parental placement adoption, the birth family social and medical histories must be
24 completed on a form provided by the department and filed with the court when the adoption petition is
25 filed.

26 (3) The department shall make a form available to agencies and court administrators for public
27 distribution.

28
29 **NEW SECTION. Section 82. Retention of disclosures.** (1) In a direct parental placement adoption,
30 the disclosures required by [section 81] must be filed with the court in support of the notice of parental

1 placement filed pursuant to [section 95] and must be permanently maintained.

2 (2) In an adoption arranged by the department or an agency, the disclosures required by [section
3 81] must be permanently maintained in the files of the department or the agency.

4
5 **NEW SECTION. Section 83. Preplacement evaluation -- timing.** (1) A child may not be placed for
6 purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement
7 evaluation completed to determine fitness and readiness as an adoptive parent.

8 (2) In a direct parental placement adoption, the placing parent must be provided with a copy of the
9 preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

10 (3) The required preplacement evaluation must provide all pertinent information pertaining to the
11 topics identified in [section 85].

12
13 **NEW SECTION. Section 84. Initiation of preplacement evaluation -- who conducts evaluation --**
14 **payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process
15 by:

16 (a) establishing a client relationship with the department or a licensed child-placing agency; or

17 (b) requesting a preplacement evaluation from either the department or a licensed child-placing
18 agency.

19 (2) The department may contract with a licensed social worker or a licensed child-placing agency
20 to conduct the evaluation.

21 (3) The prospective adoptive parent and the home of the prospective adoptive parent must be
22 studied and evaluated according to the department's or licensed child-placing agency's standards for
23 placement of a child.

24 (4) A department or agency from which an individual is seeking to adopt a child may require the
25 individual to be evaluated by its own qualified employee or independent contractor even if the individual
26 has received a favorable preplacement evaluation from another evaluator.

27 (5) Fees for the study and report are set by the entity completing them and must be paid for by
28 the prospective adoptive parent.

29
30 **NEW SECTION. Section 85. Information to be reviewed in conducting preplacement evaluation.**

(1) A preplacement evaluation must include a review of the following information about the prospective adoptive parent:

(a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over the age of 13 living in the prospective home;

(b) medical and social history and current health;

(c) assessment of potential parenting skills;

(d) assessment of ability to provide adequate financial support for a child; and

(e) assessment of the level of knowledge and awareness of adoption issues, including when appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

(2) (a) The prospective adoptive parent, the department of justice, and other state, county, and local agencies, after written notice to the subject of the study, shall give the department or agency completing the adoption study substantiated data pertaining to criminal convictions and any reports concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

(b) The adoption study must also include a check of the youth court records of each person over the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court shall release the requested information to the agency or department completing the adoption study. The study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member.

NEW SECTION. Section 86. Contents of preplacement evaluation. (1) The preplacement evaluation report must contain the following information if available:

(a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

(b) marital status and family history, including the age and location of any child of the individual and the identity of and relationship to anyone else living in the individual's household;

(c) physical and mental health and any history of abuse of alcohol or drugs;

(d) educational and employment history and any special skills;

(e) property and income, including outstanding financial obligations as indicated in a current credit

1 report or financial statement furnished by the individual;

2 (f) any previous request for an evaluation or involvement in an adoptive placement and the outcome
3 of the evaluation or placement;

4 (g) whether the individual has been charged with or convicted of domestic violence or has been
5 involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition
6 of the charges;

7 (h) whether the individual is subject to a court order restricting the individual's right to custody or
8 visitation with a child;

9 (i) whether the individual has been convicted of a crime other than a minor traffic violation;

10 (j) whether the individual has located a parent interested in placing a child with the individual for
11 adoption and, if so, a brief description of the parent and the child; and

12 (k) any other fact or circumstance that may be relevant in determining whether the individual is
13 suited to be an adoptive parent, including the quality of the environment in the individual's home and the
14 functioning of other children in the individual's household.

15 (2) The report must contain recommendations regarding the suitability of the subject of the study
16 to be an adoptive parent.

17 (3) A preplacement evaluation is valid for 1 year following its date of completion and must be
18 updated if there is a significant change in circumstances.

19 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive
20 parent must have the preplacement evaluation completed by the evaluator, and the evaluation must
21 specifically address the appropriateness of placing the specifically identified child or children who will be
22 the subject of the adoption proceedings with the prospective adoptive parent.

23
24 **NEW SECTION. Section 87. Recommendation.** (1) An evaluator shall assess the information
25 required by [section 85] to determine if it raises a specific concern that placement of any child or a
26 particular child in the home of the individual would pose a significant risk of harm to the physical or
27 psychological well-being of the child.

28 (2) If an evaluator determines that the information assessed does not raise a specific concern, the
29 evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment
30 about any factor that in the evaluator's opinion makes the individual suited in general or for a particular

1 child.

2 (3) If an evaluator determines that the information assessed raises a specific concern, the
3 evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not
4 suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.
5

6 **NEW SECTION. Section 88. Distribution of evaluation -- retention -- immunity for evaluator.** (1)

7 If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the
8 evaluator shall give the individual a signed copy of the evaluation. The evaluator shall furnish a copy of
9 the evaluation to a department, agency, or other person authorized to place a child for adoption.

10 (2) The evaluator shall provide a signed copy of the evaluation to the individual and to the
11 department. The department shall permanently retain the copy of the evaluation.

12 (3) An evaluator shall retain the original of a completed or incomplete preplacement evaluation and
13 a list of each source for each item of information in the evaluation for 2 years.

14 (4) An evaluator who conducted an evaluation in good faith is not subject to civil liability for
15 anything contained in the evaluation.
16

17 **NEW SECTION. Section 89. Action by department.** If, before a decree of adoption is issued, the
18 department learns from an evaluator or another person that a child has been placed for adoption with an
19 individual who is the subject of a preplacement evaluation on file with the department containing a finding
20 of unsuitability, the department shall immediately review the evaluation and make a determination of
21 whether the department has authority pursuant to Title 41, chapter 3, to intervene.
22

23 **NEW SECTION. Section 90. Court waiver for relatives.** The court may waive the requirement of
24 a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended
25 family member of the child. A postplacement evaluation must be conducted during the pendency of a
26 proceeding for adoption.
27

28 **NEW SECTION. Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental
29 placement adoption, the preplacement evaluation must be filed with the court in support of the petition to
30 terminate parental rights for purposes of adoption.

(2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement evaluation must be permanently maintained in the files of the department or the licensed child-placing agency.

NEW SECTION. Section 92. Requirement for preplacement evaluation. (1) Before the department or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

(2) The department or agency shall prepare a written report containing the results of its evaluation.

NEW SECTION. Section 93. Parties to direct parental placement adoption. A parent of a child may directly place the child for adoption with a specifically identified prospective adoptive parent who:

(1) resides in Montana or in another state that allows direct parental placement;

(2) is known to and has been personally selected by the parent; and

(3) has previously obtained a favorable preplacement evaluation.

NEW SECTION. Section 94. Duties of placing parent. (1) A parent who is directly placing a child for adoption shall execute a voluntary relinquishment and consent to adopt, including:

(a) receiving the counseling required by [section 48]; and

(b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) Unless a birth mother relies on the right to privacy, a placing parent shall identify and provide information on the location of any other legal parent or guardian of the child, including:

(a) any current spouse;

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and

(c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

(a) the disclosures of medical and social history required pursuant to [section 81];

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent.

NEW SECTION. Section 95. Direct parental placement -- information to be filed. (1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

(a) a notice of parental placement containing the following information:

(i) the name and address of the placing parent;

(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child;

(iv) the identity and information on the location of any other legal parent or guardian of the child, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

(v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

(vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

(b) a relinquishment and consent to adoption of the child by the adoptive parent;

(c) the counseling report required by [section 48];

(d) the medical and social history disclosures required by [section 81];

(e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;

(f) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth;

(g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

(h) the preplacement evaluation.

(2) The notice of parental placement must be signed by the parent making the placement.

NEW SECTION. Section 96. Duty of prospective adoptive parent to provide preplacement evaluation. (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt, the prospective adoptive parent shall obtain a favorable preplacement evaluation.

(2) A placing parent must be provided with a copy of the preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

NEW SECTION. Section 97. Duty to promptly petition. (1) Within 30 days after the filing of a notice of parental placement or the execution of a relinquishment and consent to the adoption of the child, whichever is later, a prospective adoptive parent shall promptly act to resolve the child's legal status by filing:

(a) a petition for termination of parental rights for purposes of adoption, including a request for custody, that includes:

(i) the relinquishment and consent to adopt executed by any legal parent other than the placing parent who has filed the notice of parental placement;

(ii) a certified copy of any court order terminating the rights and duties of any parent or guardian of the child; and

(iii) any other evidence supporting termination of the legal rights a person has with regard to the child;

- 1 (b) a petition to adopt the child who is the subject of the proceedings;
2 (c) a copy of the preplacement evaluation pertaining to the adoptive parent;
3 (d) a copy of an agreement with the department or a licensed child-placing agency agreeing to
4 accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;
5 (e) a disclosure of all disbursements made with regard to the adoptive placement to date; and
6 (f) an affidavit from the department reporting on whether any individual has registered with the
7 putative father registry and claims an interest in the child.

8 (2) The prospective adoptive parent shall request that the court promptly notice the matters
9 provided for in subsection (1) for hearing in a timely manner.
10

11 **NEW SECTION. Section 98. Custody order.** (1) The court shall consider the petition to adopt and
12 shall make a determination as to whether temporary custody should be awarded to the petitioner. In
13 making that determination, the court shall consider:

- 14 (a) the preplacement evaluation that pertains specifically to placement of the child who is the
15 subject of the adoption petition with the petitioner; and
16 (b) if any significant change in the petitioner's or child's circumstances has occurred since
17 preparation of the preplacement evaluation.

18 (2) Upon a determination that it is in the best interests of the child, the court shall enter an order
19 granting temporary custody to the prospective adoptive parent.

20 (3) Upon a determination that it is not in the best interests of the child to place custody with the
21 prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing
22 parent and shall make any other order with regard to the custody of the child that is necessary to protect
23 the well-being of the child.
24

25 **NEW SECTION. Section 99. Period for postplacement supervision.** (1) In a direct parental
26 placement adoption, the court shall maintain jurisdiction over the placement during a postplacement
27 evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

28 (2) The postplacement evaluation period must be supervised and evaluated by a qualified person
29 appointed, contracted with, or employed by:

- 30 (a) the department, if the department has accepted supervision of the placement; or

(b) a licensed child-placing agency.

(3) The court shall provide the evaluator with copies of the petition for adoption and the items filed with the petition.

(4) A decree of adoption may not be entered for at least 6 months from the date an order is entered granting temporary custody during the pendency of the proceedings.

NEW SECTION. Section 100. Postplacement evaluation for direct parental placement adoption.

(1) An evaluation must be based on a personal interview with the prospective adoptive parent in the prospective parent's home and an observation of the relationship between the child and the prospective adoptive parent.

(2) An evaluation must be in writing.

(3) At a minimum, the evaluation must include the following information:

(a) assessment of adaptation by the prospective adoptive parent to parenting the child;

(b) assessment of the health and well-being of the child in the prospective adoptive home;

(c) analysis of the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community;

(d) assessment of the level of incorporation of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives; and

(e) an account of any change in the prospective adoptive parent's marital status or family history, physical or mental health, home environment, property, income, or financial obligations since the filing of the preplacement evaluation.

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

NEW SECTION. Section 101. Time and filing of evaluation. (1) Unless the court for good cause allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within not less than 90 days and not more than 180 days after receipt of the court's order for an evaluation.

(2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be filed immediately and must explain why the concern poses a significant risk of harm to the physical or

1 psychological well-being of the child.

2 (3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed
3 with the court and shall permanently retain a copy of the evaluation and a list of every source for each item
4 of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations
5 in the evaluator's possession must be forwarded to the department for permanent retention.

6
7 **NEW SECTION. Section 102. Motion to enter adoption decree.** (1) The prospective adoptive
8 parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has
9 granted temporary custody to the prospective adoptive parent.

10 (2) The motion must be supported by the following documents:

11 (a) the postplacement evaluation prepared pursuant to [section 100]; and

12 (b) an updated list of all disbursements made in connection with the adoption proceeding.

13 (3) A notice of hearing is not required for any party whose parental rights have been terminated
14 in prior proceedings.

15 (4) The court shall consider the petition and shall grant or deny the petition pursuant to the
16 provisions of [sections 125 through 134].

17 (5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the
18 petition has been denied and shall take appropriate action for placement of the child pursuant to [section
19 131].

20 (6) Finality of the decree or the order denying the decree and the time for appeal are determined
21 pursuant to [section 137].

22
23 **NEW SECTION. Section 103. Records.** All records filed with the court in a direct parental
24 placement adoption must be permanently maintained by the court.

25
26 **NEW SECTION. Section 104. Factors to be considered -- best interests of child.** (1) All relevant
27 factors must be considered in determining the best interests of the child in an adoption proceeding. Factors
28 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a
29 child, and familial stability must be considered. In determining the best interests of the child, the following
30 factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstances;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development and as it relates to the express preference of a birth parent or a child to be placed with an adoptive parent of a particular religious faith or denomination.

(2) For purposes of ensuring that the best interests of the child are met, the department or a licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of birth parents relating to the age, marital status, or religious beliefs of an adoptive parent.

(3) Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

NEW SECTION. Section 105. Parties to department or agency placement. A parent of a child may relinquish the child for adoption to the department or a licensed child-placing agency. The department or agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43] before the relinquishment is valid.

NEW SECTION. Section 106. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

(2) A parent placing a child for adoption shall identify and provide information on the location of:

(a) any other legal parent or guardian of the child, including any current spouse; and

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.

(3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

1 (4) A parent placing a child for adoption shall provide:

2 (a) the disclosures of medical and social history;

3 (b) a certified copy of the child's birth certificate or other document certifying the place and date
4 of the child's birth; and

5 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.
6

7 **NEW SECTION. Section 107. Counseling requirements.** To the extent required by [sections 1
8 through 156] and the department's or agency's standards, the department or agency shall provide
9 counseling to the parties involved in the adoption.
10

11 **NEW SECTION. Section 108. Waiting period following placement of child.** (1) Once the
12 department or agency has received custody of the child and placed the child for adoption, the department
13 or agency shall supervise and evaluate the placement during a 6-month postplacement evaluation period.
14

15 (2) The department or agency may recommend in the postplacement evaluation filed with the
16 petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement
17 evaluation period if:

18 (a) (i) a period of at least 6 months has elapsed since the department or agency placed the child
19 in the prospective adoptive home; and

20 (ii) the department or agency has completed a postplacement evaluation during that period; or

21 (b) (i) a postplacement evaluation has been completed and filed with the court; and

22 (ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement
23 evaluation period.

24 (3) The department or an agency may recommend the waiver of the 6-month postplacement
25 evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a
26 foster child for at least 1 year.

27 **NEW SECTION. Section 109. Petition for adoption filed by prospective adoptive parent.** After the
28 child has been placed by the department or agency with the prospective adoptive parent, the parent shall
29 file a petition for adoption.
30

1 **NEW SECTION.** **Section 110. Postplacement department or agency evaluation.** (1) The

2 department or agency shall complete a written postplacement evaluation. The postplacement evaluation
3 must be conducted according to the department's or agency's standards for placement of a child and at
4 a minimum must include a personal interview with the prospective adoptive parent in that person's home
5 and observation of the relationship between the child and the prospective adoptive parent.

6 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department
7 or agency shall file the postplacement evaluation.

8 (3) The evaluation must include the following information:

9 (a) whether the child is legally free for adoption;

10 (b) whether the proposed home is suitable for the child;

11 (c) a statement that the medical and social histories of the birth parents and child have been
12 provided to the prospective adoptive parent;

13 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

14 (e) a statement that the 6-month postplacement evaluation period has been complied with or
15 should be waived;

16 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
17 the court should have knowledge;

18 (g) whether the agency waives notice of the proceeding;

19 (h) a statement that any applicable provision of law governing an interstate or intercountry
20 placement of the child has been complied with; and

21 (i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25
22 U.S.C. 1901, et seq.

23 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
24 proposed adoption.

25
26 **NEW SECTION.** **Section 111. Consent to adoption.** (1) Upon the filing of the petition for adoption
27 by the prospective adoptive parent, the department or agency that has custody of the child shall file its
28 consent to adoption.

29 (2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the
30 department or an agency in connection with that petition for adoption is not permitted.

(3) Upon a motion to withdraw consent, notice and opportunity to be heard must be given to the petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests of the child will be furthered, issue a written order permitting the withdrawal of the consent.

(4) The entry of a decree of adoption renders a consent irrevocable.

NEW SECTION. Section 112. Relinquishment to stepparent. (1) A parent may relinquish parental rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended family. The relinquishment must be executed in accordance with [sections 42 through 52]. The relinquishment may be executed at any time after the child is 72 hours old.

(2) The stepparent or extended family member shall accept the relinquishment in writing.

NEW SECTION. Section 113. Standing to adopt stepchild. (1) A stepparent has standing to file a petition for adoption of a minor stepchild of the stepparent's spouse if:

(a) the spouse has sole legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for adoption;

(b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months preceding the filing of the petition; or

(c) the department or an agency placed the child with the stepparent.

(2) For good cause shown, a court may allow an individual who is not the stepparent but who has the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated as if the petitioner were a stepparent.

(3) A petition for adoption by a stepparent may be joined with a petition for termination of parental rights.

NEW SECTION. Section 114. Consent to adoption. (1) Upon the filing of the petition for adoption by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or 116].

(2) If the child has attained 12 years of age the child must consent to the adoption.

1 **NEW SECTION. Section 115. Consent to adoption -- stepparent's spouse.** (1) A consent to

2 adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an
3 individual authorized to take acknowledgements.

4 (2) A consent must be in writing and must state that:

5 (a) the parent executing the consent has legal and physical custody of the parent's child and
6 voluntarily and unequivocally consents to the adoption of the child by the stepparent;

7 (b) the adoption will not terminate the parental relationship between the parent executing the
8 consent and the child; and

9 (c) the parent executing the consent understands and agrees that:

10 (i) the adoption will terminate the relationship of parent and child between the child's other parent
11 and the child and will terminate any existing court order for custody, visitation, or communication with the
12 child;

13 (ii) the child and any descendant of the child will retain rights of inheritance from or through the
14 child's other parent; and

15 (iii) a court order for visitation or communication with the child by an individual related to the child
16 through the parent executing the consent or an agreement or order concerning another individual that is
17 approved by the court survives the decree of adoption, but that failure to comply with the terms of the
18 order or agreement is not a ground for revoking or setting aside the consent or the adoption.

19
20 **NEW SECTION. Section 116. Consent to adoption -- child's other parent.** A consent executed

21 by a child's parent who is not the stepparent's spouse must be in writing and must state that:

22 (1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the
23 child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right
24 that the parent executing the consent has to legal or physical custody of the child;

25 (2) the parent executing the consent understands and agrees that:

26 (a) the adoption will terminate the parent's parental relationship with the child and will terminate
27 any existing court order for custody, visitation, or communication with the child;

28 (b) the child and any descendant of the child will retain rights of inheritance from or through the
29 parent executing the consent; and

30 (c) a court order for visitation or communication with the child by an individual related to the child

through the child's other parent or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

NEW SECTION. Section 117. Postplacement evaluation period -- waiver. If the child is a stepchild or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the best interests of the child, waive the 6-month postplacement evaluation period and the postplacement evaluation and grant a decree of adoption.

NEW SECTION. Section 118. Petition for adoption -- notice -- hearing. A stepparent who desires to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement evaluation, give notice of the hearing on the petition, and attend a hearing conducted by the court.

NEW SECTION. Section 119. Legal consequences of adoption of stepchild. (1) Except as provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent are the same as the consequences under [section 136].

(2) An adoption by a stepparent does not affect:

(a) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's spouse or deceased spouse;

(b) an existing court order for visitation or communication with a child by an individual related to the adoptee through either parent; or

(c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession through or from the adoptee's former parent.

(3) Failure to comply with an agreement or order is not a ground for challenging the validity of an adoption by a stepparent.

NEW SECTION. Section 120. Arrearages of child support. A termination of a parent's rights and responsibilities toward a child does not cancel any responsibility to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to waive payment.

1 **NEW SECTION.** **Section 121. Adoption of adult.** A person who has attained the age of legal
2 majority may be adopted without the consent of the person's parents.

3
4 **NEW SECTION.** **Section 122. Who may adopt adult or emancipated minor.** (1) An adult may
5 adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt
6 the adult's spouse. An adoption of an incompetent individual of any age must comply with all requirements
7 set by law for the adoption of a child.

8 (2) An individual who has adopted an adult or emancipated minor may not adopt another adult or
9 emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the
10 adoptee.

11
12 **NEW SECTION.** **Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or
13 emancipated minor is required only of:

14 (a) the adoptee;

15 (b) the prospective adoptive parent; and

16 (c) the spouse of the prospective adoptive parent unless:

17 (i) the spouse and the prospective adoptive parent are legally separated; or

18 (ii) the court finds that the spouse is not capable of giving consent or is withholding consent
19 contrary to the best interests of the adoptee and the prospective adoptive parent.

20 (2) The consent of the adoptee and the prospective adoptive parent must:

21 (a) be in writing and be signed in the presence of the court or an individual authorized to take
22 acknowledgments;

23 (b) state that the parties agree to assume toward each other the legal relationship of parent and
24 child and to have all of the rights and be subject to all of the duties of that relationship; and

25 (c) state that the parties understand the consequences that the adoption may have for any right
26 of inheritance, property, or support.

27 (3) The consent of the spouse of the prospective adoptive parent:

28 (a) must be in writing and be signed in the presence of the court or an individual authorized to take
29 acknowledgments;

30 (b) must state that the spouse:

1 (i) consents to the proposed adoption; and

2 (ii) understands the consequences that the adoption may have for any right of inheritance,
3 property, or support that the spouse has; and

4 (c) may contain a waiver of any proceeding for adoption.

5
6 **NEW SECTION. Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a
7 proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at
8 least 90 days immediately preceding the filing of a petition for adoption.

9 (2) A petition for adoption may be filed in the court in the county in which a petitioner lives.

10
11 **NEW SECTION. Section 125. Procedure.** Except as otherwise provided in [sections 121 through
12 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in
13 proceedings for the adoption of an adult. The provisions concerning the counseling requirement,
14 preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable
15 to the adoption of an adult.

16
17 **NEW SECTION. Section 126. Petition for adoption.** (1) A petition for adoption must be filed in
18 triplicate, must be notarized by the petitioners, and must specify:

19 (a) the full names, ages, and place and duration of residence of the petitioners;

20 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

21 (c) the circumstances under which the petitioners obtained physical custody of the child and the
22 name of the individual or agency who placed the child;

23 (d) the date and place of birth of the child, if known;

24 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
25 by which the child is to be known;

26 (f) that it is the desire of the petitioners that the relationship of parent and child be established
27 between the petitioners and the child and to have all the rights and be subject to all the duties of that
28 relationship;

29 (g) a full description and statement of value of all property owned or possessed by the child;

30 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the

1 adoption;

2 (i) that any applicable law governing interstate or intercountry placement was complied with;

3 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

4 (k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other
5 child in any court and the disposition of the petitions; and

6 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
7 for adoption.

8 (2) There must be attached to or accompanying the petition:

9 (a) any written consent required by [sections 125 through 134];

10 (b) a certified copy of any court order terminating the rights of the child's parents;

11 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
12 or visitation with the child;

13 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child
14 with a special need;

15 (e) the postplacement evaluation prepared pursuant to [section 100 or 110];

16 (f) a disclosure of any disbursements made in connection with the adoption proceeding.

17 (3) One copy of the petition must be retained by the court. A copy must be sent to:

18 (a) the department or to the agency participating in the adoption proceeding; and

19 (b) the parent placing the child for adoption in a direct parental placement adoption.
20

21 **NEW SECTION. Section 127. Time for action on petition for adoption -- waiver.** Not less than 6
22 months from the date the child has been placed with the prospective adoptive parent, the prospective
23 adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are
24 served, the court may waive the 6-month postplacement evaluation period and summarily consider an
25 adoption petition.
26

27 **NEW SECTION. Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption,
28 notice of hearing must be served on:

29 (a) a person whose consent to adoption is required under [section 39];

30 (b) the department or agency whose consent to adoption is required;

- 1 (c) the spouse of the petitioner if the spouse has not joined in the petition;
- 2 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
- 3 relinquishment set aside; and
- 4 (e) any other person named by the court to receive notice.
- 5 (2) The notice must direct the person to appear in court at the time specified and to show cause
- 6 why the petition should not be granted.
- 7 (3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
- 8 Procedure.
- 9 (4) A notice of hearing is not required to be served on any party:
- 10 (a) whose parental rights have been terminated in prior proceedings;
- 11 (b) who waives notice in a relinquishment, consent, or other document signed by the party;
- 12 (c) who has consented in writing to an adoption; or
- 13 (d) whose consent to adoption is not required under [section 40].

14

15 **NEW SECTION. Section 129. Content of notice.** The notice required by [section 128] must

16 contain:

- 17 (1) the caption of the petition;
- 18 (2) the address and telephone number of the court in which the petition is pending;
- 19 (3) a concise summary of the relief requested in the petition;
- 20 (4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney;
- 21 and
- 22 (5) a statement of the method of responding to the notice and the consequences of failure to
- 23 respond.

24

25 **NEW SECTION. Section 130. Hearing on petition for adoption.** (1) The petitioners and the child

26 shall appear at the hearing unless the presence of the child is waived by the court.

27 (2) The court shall examine the petition, the documents accompanying the petition, and the

28 petitioners and shall receive evidence in support of the petition.

29

30 **NEW SECTION. Section 131. Granting petition for adoption -- denial of petition.** (1) The court

1 shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence
2 received if it determines that:

3 (a) the child has been in the physical custody of the petitioners for at least 6 months, unless the
4 court for good cause shown waives this requirement pursuant to [section 108 or 117];

5 (b) notice of hearing on the petition for adoption was properly served or dispensed with;

6 (c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating
7 parental rights has been obtained and filed with the court;

8 (d) any evaluation required by [sections 1 through 156] has been filed with and considered by the
9 court; and

10 (e) the adoption is in the best interests of the child.

11 (2) If the petition for adoption is denied, the court shall dismiss the petition and enter an
12 appropriate order as to the future custody of the child according to the best interests of the child.

13
14 **NEW SECTION. Section 132. Best interests of child.** (1) In determining whether to grant a
15 petition to adopt, the court shall consider all relevant factors in determining the best interests of the child.
16 The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting
17 ability, the future security for a child, and familial stability.

18 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set
19 out in subsection (1) and shall also consider:

20 (a) the nature and length of any relationship already established between a child and any person
21 seeking to adopt the child;

22 (b) the nature of any family relationship between the child and any person seeking to adopt the
23 child and whether that person has established a positive emotional relationship with the child;

24 (c) the harm that could result to the child from a change in placement;

25 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

26 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or
27 the department or agency whose consent to the adoption is required.

28 (3) In an Indian child placement, the court shall determine if the requirements of the Indian Child
29 Welfare Act, 25 U.S.C. 1901, et seq., have been met.

1 **NEW SECTION. Section 133. Removal of child from state.** Before a decree of adoption is issued,
2 a petitioner may not remove the child from the state for more than 30 consecutive days without the
3 permission of:

- 4 (1) the court if the child was placed directly for adoption; or
5 (2) the department or the agency that placed the child for adoption.

6
7 **NEW SECTION. Section 134. Decree of adoption.** A decree of adoption must state:

- 8 (1) the original name of the child;
9 (2) the name of the petitioner for adoption;
10 (3) whether the petitioner is married or unmarried;
11 (4) whether the petitioner is a stepparent of the child;
12 (5) the name by which the child is to be known;
13 (6) a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is
14 12 years of age or older and requests that a new certificate not be issued;
15 (7) the child's date and place of birth, if known;
16 (8) the effect of the decree of adoption as stated in [section 136];
17 (9) that the adoption is in the best interests of the child; and
18 (10) whether the birth mother objects to the release of the original birth certificate information upon
19 the adoptee reaching 18 years of age.

20
21 **NEW SECTION. Section 135. Communication of decree to department.** (1) Within 30 days after
22 a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

23 (2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new
24 birth certificate to the child.

25
26 **NEW SECTION. Section 136. Effect of decree.** (1) After the decree of adoption is entered:

27 (a) the relationship of parent and child and all the rights, duties, and other legal consequences of
28 the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the
29 adoptive parent;

30 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the

1 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
2 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
3 support.

4 (2) A decree of adoption is not subject to a challenge after the decree is issued.

5 (3) A decree of adoption should include a notice to the vital statistics bureau as to the birth
6 mother's consent to release of the information on the original birth certificate upon the adoptee reaching
7 18 years of age.

8 (4) The relationship of parent and child for the purposes of intestate succession is governed by Title
9 72.

10
11 **NEW SECTION. Section 137. Finality of decree -- expediency.** (1) For purposes of appeal, the
12 decree of adoption is a final order when it is issued.

13 (2) A person may appeal from the order in the manner and form provided for appeals from a
14 judgment in civil actions.

15 (3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions
16 of [section 78].

17
18 **NEW SECTION. Section 138. Rights of adoptee.** A decree of adoption does not affect any right
19 or benefit vested in the adoptee before the decree became final.

20
21 **NEW SECTION. Section 139. Foreign adoption decrees.** When the relationship of parent and child
22 has been created by a decree of adoption of a court of any other state or country, the rights and obligations
23 of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections
24 1 through 156].

25
26 **NEW SECTION. Section 140. Visitation and communication agreements.** (1) Except as otherwise
27 provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral
28 agreement for contact or communication between the adoptee and the birth parents or family.

29 (2) Any express written agreement entered into between the placing parent and the prospective
30 adoptive parent after the execution of a relinquishment and consent to adoption is independent of the

1 adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the
2 agreement for contact or communication is later performed. Failure to perform an agreement is not grounds
3 for setting aside an adoption decree.

4 (3) A court may order that an agreement for contact or communication entered into under this
5 section may not be enforced upon a finding that:

6 (a) enforcement is detrimental to the child;

7 (b) enforcement undermines the adoptive parent's parental authority; or

8 (c) due to a change in circumstances, compliance with the agreement would be unduly burdensome
9 to one or more of the parties.

10
11 **NEW SECTION. Section 141. Confidentiality of records and proceedings.** (1) Unless the court
12 orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must
13 be held in closed court without admittance of any person other than interested parties and their counsel.

14 (2) All papers and records pertaining to the adoption must be kept as a permanent record of the
15 court and must be withheld from inspection. A person may not have access to the records, except:

16 (a) for good cause shown on order of the judge of the court in which the decree of adoption was
17 entered;

18 (b) as provided in [sections 141 through 146];

19 (c) as provided in 50-15-121 and 50-15-122.

20 (3) All files and records pertaining to adoption proceedings retained by the department, a licensed
21 child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from
22 inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

23
24 **NEW SECTION. Section 142. Disclosure of records -- nonidentifying information -- consensual
25 release.** (1) The department or authorized person or agency may disclose:

26 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family
27 member of an adoptee or birth parent; and

28 (b) identifying information to a court-appointed confidential intermediary upon order of the court
29 or as provided in 50-15-121 and 50-15-122.

30 (2) Information may be disclosed to any person who consents in writing to the release of

confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing.

NEW SECTION. Section 143. Petition for appointment of confidential intermediary. (1) An adult adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth parent, or an extended family member.

(2) A petition for disclosure must contain:

(a) as much of the following information as is known by the petitioner:

(i) the name, address, and identification of the petitioner;

(ii) the date of the adoptee's birth;

(iii) the county and state where the adoption occurred;

(iv) the date of the adoption; and

(v) any other information known to the petitioner concerning the birth parents, the adoptive parent, and the adoptee that could assist in locating the person being sought;

(b) written documentation from a certified confidential intermediary agreeing to conduct the search; and

(c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the appointment of a confidential intermediary.

NEW SECTION. Section 144. Appointment of confidential intermediary -- duties -- payment. (1) After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual

1 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

2 (3) A confidential intermediary may inspect otherwise confidential records of the court, the
3 department, or an authorized agency for use in the search. The confidential intermediary may not disclose
4 identifying information from the records or any results of a search unless authorized by the court or unless
5 the parties have executed written consent to the confidential intermediary. Nonidentifying information from
6 any source may be disclosed without further order from the court.

7 (4) If a confidential intermediary locates the person being sought, a confidential inquiry must be
8 made as to whether the located person consents to having that person's present identity disclosed to the
9 petitioner. The court may request that the confidential intermediary assist in arranging contact between the
10 petitioner and the located person.

11 (5) If a confidential intermediary locates the person being sought and the located person does not
12 consent to having that person's identity disclosed, identifying information regarding that person may be
13 disclosed only upon order of the court for good cause shown.

14 (6) If the person being sought is found to be deceased, the court may order disclosure of identifying
15 information regarding the deceased to the petitioner.

16

17 **NEW SECTION. Section 145. Disclosure authorized in course of employment.** [Sections 1 through
18 156] do not preclude an employee or agent of a court, department, or agency from:

19 (1) inspecting permanent, confidential, or sealed records for the purpose of discharging any
20 obligation under [sections 1 through 156];

21 (2) disclosing the name of the court in which a proceeding for adoption occurred or the name of
22 an agency that placed an adoptee to an individual described in [section 143(1)] who can verify the
23 individual's identity; or

24 (3) disclosing nonidentifying information contained in confidential or sealed records in accordance
25 with any other applicable state or federal law.

26

27 **NEW SECTION. Section 146. Release of original birth certificate -- certificate of adoption.** (1) For
28 a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate
29 authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall
30 furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after [the effective date of this section], in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after [the effective date of this section] and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the clerk of the court that entered a decree of adoption shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

NEW SECTION. **Section 147. Fees related to placement for adoption by parent.** (1) Reasonable adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must relate to:

(a) a petition for adoption;

(b) placement of a child;

(c) medical care or services;

(d) prenatal care;

(e) foster care;

(f) a preplacement evaluation;

(g) counseling related to providing information necessary to make an informed decision to voluntarily relinquish a child;

(h) travel or temporary living costs for the birth mother;

(i) legal fees incurred for services on behalf of the placing parent;

(j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to document the disclosures of medical and social history required by [section 81]; and

(k) other reasonable costs related to adoption that do not include education, vehicles, salary or wages, vacations, or permanent housing for the birth parent.

(2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a payment authorized by subsection (1). The payment may not be made contingent on the placement of a child for adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not completed, a person who is authorized by subsection (1) to make a specific payment is not liable for that payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to make the payment regardless of the outcome of the proceeding for adoption.

NEW SECTION. Section 148. Limitations on payment of counseling and legal fees. (1) A prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

(2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to legal counsel paid by the prospective adoptive parent continues only until the relinquishment becomes irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

NEW SECTION. Section 149. Prohibited activities -- violations -- penalties. (1) A person, other than the department or a licensed child-placing agency, may not:

(a) advertise in any public medium that the person:

(i) knows of a child who is available for adoption; or

(ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child;

or

(b) engage in placement activities as defined in [section 151].

(2) An individual other than an extended family member or stepparent of a child may not obtain legal or physical custody of a child for purposes of adoption unless the individual has a favorable preplacement evaluation or a court-ordered waiver of the evaluation.

(3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a

child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person, either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense of paying or charging excessive adoption process fees.

(4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this section are considered a gift to the birth parent.

(5) A person convicted of the offense of paying or charging excessive adoption process fees, attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1 through 156] may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city or county attorney. The court may also enjoin from further violations any person who violates [sections 1 through 156].

NEW SECTION. **Section 150. Action by department.** The department may review and investigate compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

NEW SECTION. **Section 151. Definitions.** As used in [sections 151 through 156], the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Placement activities" means any of the following:

(a) placement of a child for adoption;

(b) arranging or providing short-term foster care for a child pending an adoptive placement; or

(c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective adoptive parents.

(3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent or parents, or placement of a child by a birth parent.

NEW SECTION. **Section 152. General duties of department.** The department shall:

(1) issue licenses to entities engaged in child placement activities on [the effective date of this section] if the licensed applicant has met the requirements established by the department by rule;

- 1 (2) prescribe the conditions upon which child-placing licenses are issued and revoked; and
2 (3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the
3 welfare of children.

4
5 **NEW SECTION. Section 153. License required -- term of license -- no fee charged.** (1) Only an
6 entity holding a current child-placing agency license issued by the department may act as an agency for
7 the purpose of:

- 8 (a) procuring or selecting proposed adoptive homes;
9 (b) placing children in proposed adoptive homes;
10 (c) soliciting persons to adopt children or arranging for persons to adopt children;
11 (d) soliciting persons to relinquish children or place children in potential adoptive homes; or
12 (e) engaging in placement activities.

13 (2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

14
15 **NEW SECTION. Section 154. Requirements for licensure.** The department may issue licenses to
16 agencies meeting the following minimum requirements:

17 (1) The chief function of the agency or a specific program within the agency must be the care and
18 placement of children.

19 (2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

20 (3) The agency meets the requirements as designated by the department by rule.

21 (4) The directing or managing personnel of the agency must be qualified both on the basis of
22 professional educational experience and character.

23 (5) Complete records must be kept of both the children and adopting parents with which the
24 agency deals, and the records must be maintained in accordance with [section 141].

25 (6) The agency shall maintain and use an in-state office for making a social study of the child and
26 proposed adoptive parent before placement of the child, particularly with regard to:

27 (a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent
28 and the parent's ability to promote the child's welfare; and

29 (b) the physical and mental condition of the child and the child's family background.

30 (7) The agency must have the ability to provide education for adoptive parents and counseling for

placing parents as required in [section 48] and department rules.

(8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with other public agencies having to deal with the welfare of children.

(9) The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year.

NEW SECTION. **Section 155. Investigation of agencies -- cancellation of licenses.** (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by [section 154(9)] or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency.

NEW SECTION. **Section 156. Violation a misdemeanor -- penalty.** (1) Any person who maintains or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction of a first offense shall be punished by a fine not exceeding \$1,000 or imprisonment for up to 1 year in jail and shall be enjoined from further engaging in agency activities.

(2) Upon the second conviction of a person for violation of [sections 153 through 155], the person is guilty of a felony and may be punished by a fine not exceeding \$10,000 or imprisonment for up to 5 years in prison and shall be enjoined from further engaging in agency activities.

Section 157. Section 2-6-104, MCA, is amended to read:

"2-6-104. Records of officers open to public inspection. Except as provided in ~~40-8-126 and 27-18-111~~ and [section 141], the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person."

1 **Section 158.** Section 2-18-606, MCA, is amended to read:

2 **"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop
3 a parental leave policy for permanent state employees. The policy must permit an employee to take a
4 reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or
5 placement of a child, for a period not to exceed 15 working days if:

6 (a) the employee is adopting a child; or

7 (b) the employee is a birth father.

8 (2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103~~
9 33-22-130."

10
11 **Section 159.** Section 17-7-502, MCA, is amended to read:

12 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
13 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
14 without the need for a biennial legislative appropriation or budget amendment.

15 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
16 with both of the following provisions:

17 (a) The law containing the statutory authority must be listed in subsection (3).

18 (b) The law or portion of the law making a statutory appropriation must specifically state that a
19 statutory appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
21 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
22 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
23 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
24 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
25 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
26 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
27 39-71-907; 39-71-2321; 39-71-2504; section 16; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
28 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
29 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
30 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 160. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, a fee of \$120; and for filing a petition for legal separation, a fee of \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$30;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), \$35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

(iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as

1 provided in subsection (1)(m), \$15.

2 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
3 county general fund for district court operations unless the county has a district court fund. If the county
4 has a district court fund, the money must be deposited in that fund.

5 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
6 remitted to the state to be deposited as provided in 19-5-404.

7 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
8 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

9 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
10 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
11 judicial salaries.

12 (9) The clerk of district court shall remit to the credit of the special revenue account established
13 in [section 16] \$70 of the filing fee required in subsection (1)(g)."

14

15 **Section 161.** Section 33-22-130, MCA, is amended to read:

16 **"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1)**

17 Each group and individual disability policy, certificate of insurance, or membership contract that is delivered,
18 issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child
19 of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

20 (2) The coverage required by this section must be effective from the date of placement for the
21 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
22 child is removed from placement. Coverage at the time of placement must include the necessary care and
23 treatment of medical conditions existing prior to the date of placement.

24 (3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ the
25 transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the
26 child."

27

28 **Section 162.** Section 33-30-1016, MCA, is amended to read:

29 **"33-30-1016. Coverage for adopted children from time of placement -- preexisting conditions. (1)**

30 Each individual or group membership contract issued or amended by a health service corporation in this

1 state that provides coverage of dependent children of a member must provide coverage for an adopted child
2 of the member to the same extent as for natural children of the member.

3 (2) The coverage required by this section must be effective from the date of placement for the
4 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
5 child is removed from placement. Coverage at the time of placement must include the necessary care and
6 treatment of medical conditions existing prior to the date of placement.

7 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
8 in ~~40-8-103~~ 33-22-130."

9
10 **Section 163.** Section 33-31-114, MCA, is amended to read:

11 **"33-31-114. Coverage for adopted children from time of placement -- preexisting conditions.** (1)
12 Each health maintenance contract regulated under this chapter must provide coverage for an adopted child
13 of the enrollee to the same extent as for natural children of the enrollee.

14 (2) The coverage required by this section must be effective from the date of placement for the
15 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
16 child is removed from placement. Coverage at the time of placement must include the necessary care and
17 treatment of medical conditions existing prior to the date of placement.

18 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
19 in ~~40-8-103~~ 33-22-130."

20
21 **Section 164.** Section 37-60-301, MCA, is amended to read:

22 **"37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person
23 to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary
24 security organization, a private investigator, or a private security guard without having first obtained a
25 license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status
26 and shall renew their licenses on the renewal date as prescribed by the department.

27 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
28 the person is licensed as a private investigator, a contract security company, a proprietary security
29 organization, or a private security guard.

30 (3) A person appointed by the court as a confidential intermediary under [section 144] is not

required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section 144].

~~(3)~~(4) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."

Section 165. Section 40-6-108, MCA, is amended to read:

"40-6-108. Statute of limitations. (1) An action may be commenced at any time for the purpose of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection (a), (b), or (c) of 40-6-105(1)(a), (1)(b), or (1)(c).~~

(2) After the presumption has been rebutted, paternity of the child by another ~~man~~ individual may be determined in the same action if the other ~~man~~ individual has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority. This subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a paternity action was barred or could have been barred by a shorter limitation period. However, in previously barred actions that are revived by this subsection, the father is not liable to the state agency for support of the child.

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) Section 40-6-107 and this section do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ [sections 1 through 156], a further action to declare the existence or nonexistence of the father and child relationship of the adopted child may not be commenced, except as provided in 40-8-112."

1 **Section 166.** Section 41-3-609, MCA, is amended to read:

2 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
3 relationship upon a finding that any of the following circumstances exist:

4 (a) the parents have relinquished the child pursuant to ~~40-6-135~~ sections 43 and 51;

5 (b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

6 (c) the child is an adjudicated youth in need of care and both of the following exist:

7 (i) an appropriate treatment plan that has been approved by the court has not been complied with
8 by the parents or has not been successful; and

9 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
10 reasonable time; or

11 (d) the parent has failed to successfully complete a treatment plan approved by the court within
12 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
13 legal custody under 41-3-410.

14 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
15 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship
16 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders
17 the parents unfit, unable, or unwilling to give the child adequate parental care. In making the
18 determinations, the court shall consider but is not limited to the following:

19 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
20 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
21 within a reasonable time;

22 (b) a history of violent behavior by the parent;

23 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child
24 caused by the parent;

25 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
26 ability to care and provide for the child;

27 (e) present judicially ordered long-term confinement of the parent;

28 (f) the injury or death of a sibling due to proven parental abuse or neglect; and

29 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
30 parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication."

Section 167. Section 41-5-603, MCA, is amended to read:

"41-5-603. Youth court and department records. (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

(2) Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon

1 the party;

2 (e) the county attorney;

3 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
4 majority;

5 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
6 not listed in this subsection (2);

7 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

8 (i) persons allowed access to the records under 45-5-624(7); and

9 (j) persons allowed access under [section 85].

10 (3) Any part of records information secured from records listed in subsection (2), when presented
11 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
12 for the parties to the proceedings.

13 (4) After youth court and department records, reports of preliminary inquiries, predispositional
14 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
15 order of the youth court, for good cause to:

16 (a) those persons and agencies listed in subsection (2); and

17 (b) adult probation professional staff preparing a presentence report on a youth who has reached
18 the age of majority."

19
20 **Section 168.** Section 41-5-604, MCA, is amended to read:

21 **"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court
22 records and law enforcement records pertaining to a youth covered by this chapter must be physically
23 sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is
24 committed.

25 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
26 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed
27 upon termination of the extended jurisdiction.

28 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an
29 agency or department that has in its possession copies of the sealed records shall also seal or destroy the
30 copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(4) This section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, or records referred to in 45-5-624(7) or [section 85]."

Section 169. Section 50-15-223, MCA, is amended to read:

"50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court has determined the paternity of the person; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment ~~may not be~~ are only subject to inspection, except upon order of a district court, as provided by rule, as provided in [sections 141 through 146], or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department may direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state either be sealed from inspection or be forwarded to the department for sealing from inspection.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

Section 170. Section 52-2-505, MCA, is amended to read:

"52-2-505. Records to be confidential. All records regarding subsidized adoption are confidential

1 and may be disclosed only in accordance with the provisions of ~~40-8-126~~ [section 141]."

2

3 NEW SECTION. Section 171. Repealer. Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128,
4 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107,
5 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117,
6 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136,
7 40-8-201, and 40-8-202, MCA, are repealed.

8

9 NEW SECTION. Section 172. Severability. If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

13

14 NEW SECTION. Section 173. Applicability. (1) [Sections 1 through 156] apply to proceedings
15 commenced on or after October 1, 1997.

16 (2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the
17 time the petition was filed.

18 (3) The putative father registry requirements apply to children born on or after October 1, 1997.

19

20 NEW SECTION. Section 174. Code commissioner instructions. The code commissioner shall
21 renumber Title 41, chapter 4, and Title 52, chapter 2, parts 4 and 5, as an integral part of [sections 1
22 through 156] and make any changes necessary to reflect the renumbering. The entire body of material
23 must be codified as Title 42.

24

25 NEW SECTION. Section 175. Termination. [Sections 27, 59, 64, 66, 68, and 74] terminate
26 October 1, 1998.

27

28 NEW SECTION. Section 176. Notification to tribal governments. The secretary of state shall send
29 a copy of [this act] to each tribal government located on the seven Montana reservations.

30

1 **NEW SECTION.** **Section 177. Effective dates.** (1) Except as provided in subsection (2), [this act]
2 is effective October 1, 1997.

3 (2) [Sections 19 through 26, 28 through 38, 60, 65, 67, 69, and 75] are effective October 1, 1998.

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0163, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising and clarifying adoption laws; providing procedures for various types of adoptions; providing for a putative father registry; providing for degrees of access to records; prescribing a fee for filing a petition for adoption; and statutorily appropriating fees.

ASSUMPTIONS:

Department of Health and Human Services (DPHHS), Child and Family Services Division:

1. There is a state special revenue account created for deposit of fees that may be charged by the DPHHS to complete an adoption or to contract for services to complete an adoption. Proceeds of the account are statutorily appropriated to DPHHS to use for adoption services.
2. It is assumed that about 600 adoptions will be completed each year.
3. The bill creates an adoption filing fee of \$75. DPHHS will receive \$70 of that amount, which also must be deposited to the new state special revenue account.
4. DPHHS intends to fund the putative father registry from the new state special revenue account.
5. DPHHS anticipates that the adoption filing fee will generate \$42,000 annually and that other adoption fees will raise \$15,000 annually, for total annual revenue to the new state special revenue account of \$57,000.
6. DPHHS anticipates using all the revenue in the account to fund adoption activities operating expense and the putative father registry.

DPHHS Child Support Enforcement Division (CSED):

7. The bill removes the child support obligation at the time the child is relinquished by the responsible parent. Should the adoption fail after relinquishment, the child support responsibility has already been terminated by the original parent and a new child support responsibility has not been established.
8. CSED serves approximately 50 families per year where the child has been relinquished and the adoption fails.
9. The average CSED child support order as of March 1996 was \$231. Over the child's first eighteen years, the amount of support would be about \$49,900.
10. CSED collections of support would be reduced by \$138,600 per year (50 families X \$231 per child support order X 12 months).
11. CSED Temporary Assistance to Needy Families (TANF) collections are about 30% of the total collections. About \$97,020 would be Non-TANF and \$41,580 would be TANF. CSED retains about 40% of in-state TANF collections in state special revenue. CSED would lose about \$16,632 in state special revenue.

FISCAL IMPACT:

Child Support Enforcement Division:

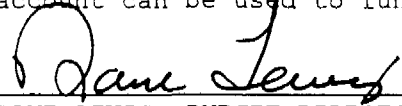
	<u>FY98</u>	<u>FY99</u>
Revenues:	<u>Difference</u>	<u>Difference</u>
Child Support State Special (02)	\$(16,632)	\$(16,632)

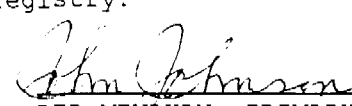
Expenditures:

The bill contains statutory appropriation authority for the operating expenses.

TECHNICAL NOTES:

Section 16, which creates the state special revenue account to fund adoption services, does not include \$70 of the adoption filing fee authorized in Section 160 of the bill. Section 160 requires the \$70 fee be deposited in the new state special revenue account, but the account and statutory appropriation to use account proceeds do not recognize the revenue from the adoption fee. The department intends to fund the putative father registry from this account and proceeds of the \$70 adoption fee are intended to cover part of the putative father registry cost. It is unclear whether the fees deposited in this account can be used to fund the putative father registry.

 2-14-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


RED MENAHAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0163, as introduced

HB 163

87

HOUSE JUDICIARY

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0098	CLARK, ROBERT	ELIMINATE HANGING AS MEANS OF EXECUTION							
	1/06	1/17		PASS AS AMENDED	01/21	VOTE: 13-8			1/21
HB0111	AHNER, CHRIS	REVISE VIOLENT OFFENDER AND SEXUAL OFFENDER REGISTRATION LAW							
	1/07	1/14		PASS AS AMENDED	01/22	VOTE: 14-5			1/25
HB0122	MCGEE, DANIEL	REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS							
	1/06	1/15		PASS AS AMENDED	01/17	VOTE: 15-5			1/20
HB0122	MCGEE, DANIEL	REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS							
	3/10			COM RPT - 03/14		VOTE:10-6			3/14
HB0127	JOHNSON, JOHN	REVISE POSTCONVICTION RELIEF LAWS IN DEATH PENALTY CASES							
	1/23	2/05		TABLED ON	02/05	VOTE: 20-0			
HB0135	SMITH, LIZ	REVISE MEDICAL PAROLE AND STAGGER TERMS OF MEMBERS OF BD. OF PARDONS & PAROL							
	1/07	1/13		PASS AS AMENDED	01/20	VOTE: 18-0			1/20
HB0137	SMITH, LIZ	NO INQUEST FOR PRISONER DEAD FROM DEATH SENTENCE OR TERMINAL CONDITION							
	1/06	1/13	1/20/97 Tabled 16-2	PASS AS AMENDED	01/24	VOTE: 11-7			1/25
HB0141	KEENAN, BOB	REVISE ADMINISTRATIVE PROVISIONS CONCERNING SUPREME COURT							
	1/06	1/13		DO PASS	01/15	VOTE: 20-0			1/16
HB0159	BARNHART, BEVERLY	ALLOW DPHHS TO INITIATE CHILD CARE REMEDY IN JUSTICE, CITY, MUNI. OR DIST. COURT							
	1/06	1/17	1/29/97 Tabled 14-2	DO PASS	02/20	VOTE: 14-6			2/20
HB0163	JOHNSON, JOHN	REVISE ADOPTION LAWS							
	1/06	1/24	2/10/97 Tabled 19-1	PASS AS AMENDED	03/25	VOTE: 15-4			3/25
HB0168	JOHNSON, ROYAL	GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS							
	1/06	1/21		PASS AS AMENDED	01/24	VOTE: 14-5			1/25
HB0187	WALTERS, ALLEN	PENALTY WHEN ADULT LETS CHILD USE GUN AND DEATH OR BODILY INJURY OCCURS							
	1/08	1/30		TABLED ON	02/05	VOTE: 18-0			

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 24, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Bill Tash (R)

Members Excused: Rep. Jon Ellingson (D)
Rep. Brad Molnar (R)
Rep. Loren L. Soft (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 163, HB 234, POSTED 1/15/97
Executive Action: HB 168 DO PASS AS AMENDED
HB 137 DO PASS AS AMENDED

HEARING ON HB 163

Opening Statement by Sponsor: REP. JOHN JOHNSON

{Tape: 1; Side: A; Approx. Time Count: 1.5; Comments: This is set of minutes is recorded on 90-minute tapes.}

Proponents' Testimony:

HANK HUDSON, Administrator, Child and Family Services, Department of Health and Human Resources (DHHS)

{Tape: 1; Side: A; Approx. Time Count: 4.4}

ANN GILKEY, Attorney, DHHS - EXHIBITS 1, 2, 3, 4 and 5

{Tape: 1; Side: A; Approx. Time Count: 9.6}

MARILYN MC KIBBEN, Catholic Social Services - EXHIBIT 6

{Tape: 1; Side: A; Approx. Time Count: 20.3}

MARK RICKS, LDS Social Services

{Tape: 1; Side: A; Approx. Time Count: 22.7}

LYNN FAGENSTROM, Lutheran Social Services

{Tape: 1; Side: A; Approx. Time Count: 23.9}

LAURIE KOUTNIK, Christian Coalition

{Tape: 1; Side: A; Approx. Time Count: 26.4}

JEFF MANGAN, Adoption Task Force

{Tape: 1; Side: A; Approx. Time Count: 28.1}

JAN WEBER, Catholic Social Services - EXHIBIT 7

{Tape: 1; Side: A; Approx. Time Count: 32.5}

KIMBERLY KRADOLFER

{Tape: 1; Side: A; Approx. Time Count: 36.7}

FRED FISHER, Casey Program

{Tape: 1; Side: A; Approx. Time Count: 43.7}

ROBERT TORRES, Montana Chapter, National Association of Social Workers {Tape: 1; Side: B; Approx. Time Count: 0.5}

DARCY CRUM, Attorney, Adoption Task Force

{Tape: 1; Side: B; Approx. Time Count: 1.9}

BILL DRISCOLL - EXHIBIT 8

{Tape: 1; Side: B; Approx. Time Count: 4.4}

LARRY LOBERG, MFAPA Secretary

{Tape: 1; Side: B; Approx. Time Count: 5.7}

LINDA GALLOWAY, Foster Parent/Adoptive Parent

{Tape: 1; Side: B; Approx. Time Count: 6.5}

BETSY STIMATZ, DHHS

{Tape: 1; Side: B; Approx. Time Count: 11.1}

ARDIS LOBERG, Foster Parent

{Tape: 1; Side: B; Approx. Time Count: 12.4}

EXHIBIT 9 - Provided to the committee prior to the hearing.

Questions From Committee Members and Responses:

{Tape:1; Side:B; Approx. Time Count: 13.4 - Tape 2; Side A; 30.0}

Closing by Sponsor: REP. JOHNSON

{Tape: 2; Side: A; Approx. Time Count: 30.1}

HEARING ON HB 234

Opening Statement by Sponsor: REP. ROD BITNEY - EXHIBIT 10

{Tape: 2; Side: A; Approx. Time Count: 31.6}

Proponents' Testimony:

RICK DAY, Director, Department of Corrections

{Tape: 2; Side: A; Approx. Time Count: 38.8}

Opponents' Testimony:

RON WATERMAN - EXHIBIT 11

{Tape:2; Side: A; Approx. Time Count: 42.6 - Tape 2; Side B; 1.7}

BETTY WADDELL, Montana Association of Churches

{Tape: 2; Side: B; Approx. Time Count: 1.8}

CHRIS IMHOFF, Montana League of Women Voters - EXHIBIT 12

{Tape: 2; Side: B; Approx. Time Count: 7.5}

RUSSELL HILL, Montana Trial Lawyers Association

{Tape: 2; Side: B; Approx. Time Count: 10.0}

MARILYN PARKER - EXHIBIT 13

{Tape: 2; Side: B; Approx. Time Count: 13.7}

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 15.3 - 27.0}

Closing by Sponsor: REP. BITNEY

{Tape: 2; Side: B; Approx. Time Count: 27.1}

EXECUTIVE ACTION ON HB 168

Motion: REP. DIANE SANDS moved HB 168 DO PASS.

Motion/Vote: REP. SANDS moved the amendments presented on 1/21/97. The motion carried 16 - 1, REP MC GEE voting no.

Motion/Vote: REP. SANDS moved further amendments, EXHIBIT 14. The motion carried 15 - 2, REPS. MC GEE and CLARK voting no.
{Tape: 2; Side: B; Approx. Time Count: 32.9}

Motion: REP. SANDS moved HB 168 DO PASS AS AMENDED.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1/24/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON			✓
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR			✓
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT			✓
REP. BILL TASH	✓		

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES

EXHIBIT 1

DATE 1/24/97

HB 163



MARCRACICOT
GOVERNOR

LAURIE KANGER
DIRECTOR

STATE OF MONTANA

OFFICE OF LEGAL AFFAIRS

COGSWELL BUILDING
PO BOX 202951
HELENA, MONTANA 59620-2951
(406) 444-9503
FAX (406) 444-9744

January 24, 1997

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
TESTIMONY IN SUPPORT OF HB 163

Submitted by Ann Gilkey

The 1995 Legislature directed the Department to appoint a committee of interested parties to review Montana's adoption statutes, the proposed Uniform Adoption Act (UAA) and the adoption laws of other states to come up with a recommendation for changes to present to this session. A citizen task force consisting of various adoption professionals, attorneys familiar with adoption law and adoption triad members met regularly for the past year and a half. HB 163 is the result of our efforts.

The task force reviewed Montana's statutes and the UAA in depth, as well as statutes from other states. It was concluded that Montana's statutes had both strengths and weaknesses, but needed revision. The proposed legislation repeals all of Montana's existing statutes related to adoption so that the organization of the statutes could be appropriately arranged for clarity. Many sections of Montana law are in the bill verbatim or with slight modifications. Other provisions were borrowed from the UAA and other states or drafted to fit an identified need.

The bill draft was circulated to hundreds of parties, including judges, clerks of court, adoptees, birth family advocates and adoption agencies. The comments we received back were carefully considered and many were incorporated into the bill. The end result is a compromise bill. Not everyone is completely happy with every aspect of the bill. But what the bill does well is balance the rights of all parties in the adoption triad -- the birth parents, the adoptive parents and the child.

The main components of the bill include:

- logical organization of the laws, particularly in regard to direct parental placement adoptions;
- establishes a putative father registry that will be effective in October 1, 1998;
- protects the vested rights of a parent before rights to a child may be terminated;

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- expedites placement and provides timely resolution of placement issues by clearly outlining the duties of the parties;
- prohibits "baby brokering" by unlicensed for-profit agencies; and
- supports openness in adoption to the extent the parties wish to have that option available to them.

Putative Father Registry:

The registry will serve a dual purpose. For those unmarried fathers who wish to take responsibility for their child, their right to receive notice of any proceeding to terminate his parental rights to the child will be protected if they register before the child's birth. If the unmarried father does not protect his rights by registering before the child's birth the court may terminate his rights to the child for the purpose of adoption. This will ensure that adoptions are final and can't be overturned at a later date like the now famous "Baby Richard" case.

To educate the public about the registry, the department will place notice of the registry in many public places including hospitals, health department, district court, driver's exam station, and county clerk and recorder. For two years, every notice of vehicle registration renewal will also contain information about the registry.

Voluntary Termination of Parental Rights:

The statutes retain the provision that a relinquishment may not be executed prior to 72 hours after the child's birth.

The bill sets out in detail the information to be included in a relinquishment in order to prove that it was executed voluntarily and after the birth mother, with counseling, has carefully considered the reasons for and effects of relinquishing.

Direct Parental Placement Adoptions:

Currently, the step by step requirements for perfecting an adoption in a direct parental placement are not set out anywhere. This bill sets them out in detail to provide, in effect, a flowchart of what must happen when.

The bill also provides a cohesive flow of the steps to follow in department or agency adoptions, stepparent adoptions and situations in which an adult is adopted.

Records:

HB 163 makes minor changes to the current confidential intermediary statutes. It also clarifies when an adoptee may obtain a copy of his/her original birth certificate. The task force originally recommended that birth certificates be available to all adoptees who had reached age 18. After receiving numerous comments on that topic, we amended the bill draft to address whatever expectation of privacy a birth parent may have if she placed her child during a time when original birth certificates were not automatically available.

The current bill draft provides that adoptees born between July 1, 1967 and September 30, 1997, must still rely on the laws in place during that time to gain access to their birth certificate. Adoptees born after the effective date of this Act will have access to their birth certificates at age 18 unless a birth parent specifically notifies the Bureau of Vital Statistics that they do not want the birth certificate automatically released. Adoptees born prior to July 1, 1967 will also have access to their birth certificates because that was the date that the law changed to prohibit automatic release of birth certificates. Persons placing their babies for adoption before July 1, 1967 had no expectation of privacy.

Baby Brokering:

HB 163 clarifies current law on advertising and baby brokering to expressly limit advertising connected with adoptions. Only the department and licensed child placing agencies are allowed to advertise the availability of a child for adoption or the availability of adoptive parents without facing civil and criminal sanctions.

Compliance with other laws:

HB 163 points out that there are other federal and state laws that must be complied with in some adoptions, such as the Indian Child Welfare Act and the Interstate Compact on Placement of Children.

Because of the delayed effective date of the putative father registry, there are several statutes that must remain in effect for a year, until the registry is effective. Those statutes will then automatically be repealed when the Registry becomes law. That is why you will see some sections that seem to be duplicates, but actually reflect differences between current law and the registry.

Amendments to House Bill No. 163
Reading Copy

EXHIBIT 2
DATE 1/24/97
HB 163

For the Committee on House Judiciary

Prepared by Ann Gilkey
January 20, 1997

1. Title, line 15.
Following: "40-8-201,"
Strike: "AND"
Following: "40-8-202,"
Insert: "52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407"
2. Page 8, line 9.
Strike: "in a court proceeding"
3. Page 8, line 22.
Strike: "adoption proceedings"
Insert: "termination of parental rights"
4. Page 8, line 23.
Strike: "an adoption"
Insert: "a"
5. Page 8, line 27.
Strike: "adoption"
Following: "involving"
Insert: "termination of parental right to"
6. Page 11, line 1.
Strike: "under 40-6-107"
7. Page 11, line 2.
Strike: "for purposes of 40-6-107"
8. Page 13, line 13.
Following: "name"
Insert: "including her maiden name, if known"
9. Page 14, line 21.
Strike: "pursuant to 40-6-116"
10. Page 14, line 25.
Strike: "-- fraud"
11. Page 15, line 7.
Following: "registration"
Insert: "unless a support order has been issued"
12. Page 18, line 9.
Following: "child"
Insert: "or for the child's support"

13. Page 18, line 12.

Strike: "do"

Insert: "does"

14. Page 23, line 6.

Strike: "must"

Insert: "may"

15. Page 23, line 20.

Following: "agency;"

Insert: "and"

16. Page 23, line 21.

Strike: "; and" and all of line 22

Insert: "."

17. Page 24, line 25.

Following: "child"

Insert: "except for the duty to pay support if paternity is
established or presumed"

18. Page 25, line 3.

Following: "child"

Insert: "except the duty to pay support"

19. Page 26, line 14.

Strike: "22"

Insert: "66"

20. Page 27, line 6.

Strike: "before"

Insert: "by"

21. Page 28, lines 17 and 19.

Strike: "putative or presumed father"

Insert: "parent"

22. Page 29, lines 3 and 25.

Following: "proof of"

Insert: "prior"

23. Page 29, line 2.

Strike: "and"

24. Page 29, line 3.

Strike: "."

Insert: "; and"

Following: line 3

Insert: "(g) proof of compliance with the Indian Child Welfare Act
and Interstate Compact on the Placement of Children, if
applicable."

25. Page 29, line 24.

Strike: "and"

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26. Page 29, line 25.

Strike: "."

Insert: "; and"

Following: line 25

Insert: "(g) proof of compliance with the Indian Child Welfare Act and Interstate Compact on the Placement of Children, if applicable."

27. Page 31, line 5.

Strike: "denial"

Insert: "waiver"

28. Page 31, line 18.

Strike: "father"

Insert: "parents"

29. Page 31, line 20.

Following: "identify"

Strike: "the"

Insert: "any legal"

30. Page 31, line 22.

Following: "conception"

Insert: "and prior to birth"

31. Page 32, line 3.

Strike: "father"

Insert: "parent"

32. Page 32, line 8.

Following: "after conception"

Insert: "and prior to birth"

33. Page 32.

Following: line 13.

Insert: "(3) Proof of service of any notice or acknowledgement of service or waiver"

Renumber: subsequent sections

34. Page 35, line 27.

Strike: "unable"

Insert: "able"

35. Page 38.

Following: line 4

Insert: "(5) A person accepting custody is responsible for the support of the child."

36. Page 42, lines 7 and 8.

Strike: "If" through "evaluation." on line 8.

37. Page 42, line 10.

Following: "(2)"

Insert: "In a direct parental placement adoption"

Strike: "The"

Insert: "the"

38. Page 42, line 11.

Strike: "The department shall permanently retain the copy of the evaluation"

39. Page 42, line 13.

Strike: "for 2 years"

Following: "."

Insert: "If the evaluator ceases to do business in Montana, the evaluator's records shall be forwarded to the department for retention."

40. Page 43, line 21.

Strike: "Unless a birth mother relies on the right to privacy a"

Insert: "A"

41. Page 56, line 4.

Following: "waiver"

Insert: "of notice"

42. Page 56, line 9.

Strike: "may"

Insert: "shall"

43. Page 57, line 18.

Strike: "and"

Insert: "or"

44. Page 57, line 24.

Following: ", "

Insert: "and pursuant to [sections 108 and 117],"

45. Page 60, line 13.

Following: "(6)"

Insert: "for a child born in Montana,"

46. Page 62, line 19.

Strike: "."

Insert: "; or (d) to the department's child support enforcement division providing services under 42 USC 651 et. seq."

47. Page 65, line 12.

Following: "age,"

Strike: "the clerk of the court that entered a decree of adoption"

Insert: "the department"

48. Page 70, line 27.

Following: "16"

Insert: "and 160"

49. Page 73, line 13.

Following: "(1)(q)"

Insert: "and \$5 of the filing fee shall be deposited in the district court fund. If no district court fund exists, fees

must be deposited in the general fund for district court operations."

50. Page 81, line 7.

Following: "40-8-201,"

Strike: "and"

Following: "40-8-202,"

Insert: "52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, and 52-2-407"

51. Page 81, line 21.

Strike: "Title 41, chapter 4, and"

Strike: "parts 4 and"

Insert: "part"

52. Page 81, line 25.

Strike: "68"

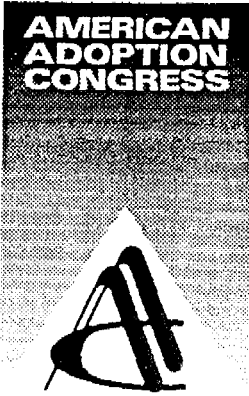
Insert: "69"

EXHIBIT 3

DATE 1/24/97

HB 163

L. Anne Babb, Ph.D., President
448 Claremont Drive
Norman OK 73069
(V/F) 405-329-9294
aacr76a@prodigy.com



January 17, 1997

Ms. Betsy Stimatz
Montana DPHHS
Division of Child and Family Services
P. O. Box 8005
Helena MT 59604-8005

Dear Ms. Stimatz:

The American Adoption Congress is pleased to offer our support of and comments regarding HB 163, an act revising and clarifying Montana adoption laws. The American Adoption Congress (AAC) is an international non-profit organization comprised of adult adoptees, birth parents, adoptive parents, professionals, and others interested in the human service of adoption. A 19-year-old organization, we have members in every state in the United States and several foreign countries. We are the nation's largest organization representing the adoption triad and adoption professionals.

We offer for your inclusion in committee testimony and the record the attached comments on HB 163. Our national representative on the Uniform Adoption Act, Betsy Forrest, and I have thoroughly read HB 163. We commend your department, the legislature, and the many others involved in the drafting of this act for its excellence. We monitor legislation and are asked to comment on it for many states in each legislative session. In addition, we have assisted Canadian provinces with their acts reforming adoption law. We have rarely seen an act that so expertly balances the needs and rights of adoptees, birth parents, and adoptive parents, or that so well defines the best interests of the child standard, which underlies all good adoption practice.

We are pleased to lend our support to your bill and look forward to hearing about its passage. Montana's bill could well be used as a model adoption act, setting an example for other states.

Sincerely,

L. Anne Babb, Ph.D.
President

Exhibit # 3 - multi page
support and comments on HB 163
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P. O. Box 201201
Helena, MT. 59602-1201
Phone: (406) 444-4774



DECREE

EXHIBIT 4

DATE 1/24/97

HB 763

Fall 1996

Established 1978

EXHIBIT Vol. 13, No. 3

Victory in Tennessee! Judge Upholds Adoption Reform Law—Plaintiffs File Appeal

by L. Anne Babb, Ph.D., AAC President

Since July 1, 1995 all Tennessee adoptees born and adopted before 1951 have been able to apply for and receive their adoption records, including their original birth certificate. Such records were sealed in Tennessee in 1951, as they were sealed in many states. Since the new legislation took effect last year, over 500 applications for adoption records have been processed. On July 1, 1996, a second phase of the landmark Tennessee legislation was to take effect, allowing all post-1951 Tennessee adoptees to apply for and receive copies of their adoption records and their original birth certificate. The statutes applying to post-1951 records allow birthparents to maintain confidentiality by filing a "contact veto." This momentous civil rights legislation restored to Tennessee-born adoptees the right enjoyed by all other American citizens to know their identity at birth.

Through a lawsuit filed June 25, however, detractors challenged the law, which took two years to research, draft, and pass. The suit was filed by attorney Larry Crain of the Washington, D.C.-based American Center for Law and Justice on behalf of two birthmothers, "Promise Doe" and "Jane Roe," adoptive parents "Kimberly C. and Russ C.," and Small World Ministries, Inc., the only NCFA-affiliated adoption agency in Tennessee. The class action suit seeking to overturn Tennessee's open records law in



Thumbs Up! Caprice East and Denny Glad, leaders of the Tennessee adoption reform movement, relish victory. Photo by Pam Cunningham.

federal court named the state, its governor, and the Tennessee Department of Human Services as defendants.

In June, U.S. District Judge John T. Nixon barred the state from opening adoption records until he could consider the arguments. On August 23, Judge Nixon denied the plaintiffs' motion for an injunction against the law, allowing the state to proceed with processing applications for adoption records. In his ruling, Nixon said the public good would be served by open records. The state had

(continued on page 4)

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Victory in Tennessee—Babb

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processed over 300 requests for information as we went to press.

Following Nixon's ruling, the plaintiffs sought another stay of the law pending their appeal to the 6th Circuit Court of Appeals, stating **they would appeal to the U.S. Supreme Court if necessary.** They asked Judge Nixon to suspend the law pending their appeal to a higher court, but he denied their request, stating it was **"without merit."** The plaintiffs also filed a certification of class request, stating that the plaintiffs are representative of most birthmothers, adoptive parents, and adoption agencies.

None of the forms signed by birthparents in Tennessee, past or present, guarantee birthparent confidentiality.

On August 28, the National Council for Adoption announced its intention to intervene in the case, stating it fears that the ruling will lead other states to open records.

The Nashville Tennessean quoted William Pierce, NCFA president, as saying that the law's supporters "want to use this as their model to destroy privacy in Texas, New Jersey, Pennsylvania and other states." Crain said that he delayed filing an appeal so that the NCFA could join the suit.

The AAC Takes Aim

Late in June, the AAC retained Nashville attorney Harlan Dodson, III to represent a group of over 70 adoptees, birth and adoptive parents, and adoption agency professionals who sought to intervene in the case and receive legal standing. Judge Nixon denied the motion to intervene, but gave Friend of the Court status to a group of 16 birthparents, 5 adoptive parents, and 33 adoptees.

Plaintiffs' Arguments Against Access

The arguments the plaintiffs made against access to adoption records were several, all predicated on the argument that the plaintiffs' civil rights would be violated if the law went into effect. The arguments and how the supporters of the Tennessee law countered those arguments, follows.

"Sealed adoption records ease the trauma of surrendering a child to adoption." In their complaint, the plaintiffs claim that the emotional trauma

and personal sacrifice suffered by surrendering birthmothers is lessened in part only by the promise of sealed adoption records. Upon discovering her unplanned pregnancy, plaintiff Promise Doe sought an abortion of her unborn child. An ultrasound, however, showed that the unborn child had already reached 7½ months gestation, past the time when a Tennessee woman can have a legal abortion. Doe claimed, however, that due to her "sincerely held religious and conscientious beliefs," she could not "go through with aborting my unborn child." Doe went on to describe her anguished decision to surrender her child for adoption, made more difficult by the fact that she had no support from the father of her unborn child. The father, in fact, "to this day... does not know of my pregnancy or later delivery of his child." Doe's affidavit makes one wonder whether the father's due process rights to notification of his child's birth and adoption were respected. Rather than accept welfare, Doe claimed that she decided to surrender her child for adoption. During the course of her "adoption screening with Small World" (a co-plaintiff in the case), Doe said that she was "required to divulge information about the circumstances leading to" her pregnancy and "the birthfather of the child." One wonders once again how the baby's father could remain ignorant of his child's birth and adoption in the face of such detailed information given to the agency. Doe claims she surrendered her child only after being assured that her information would "remain confidential and sealed." As a representative of all birthmothers, Doe claimed that retroactive opening of sealed adoption records breach the State's alleged contractual obligation to keep records sealed.

The plaintiffs did not offer any evidence that sealed records relieve any or all trauma associated with the surrender of a child to adoption. Research with post-surrender birthmothers, in fact, has indicated that trauma is perpetuated under our sealed records systems. Testimony received by the Tennessee Adoption Commission and General Assembly prior to the passage of the law showed that State adoption procedures never promised confidentiality to birthparents. Moreover, none of the forms signed by birthparents in Tennessee, past or present, promise birthparent confidentiality. Under the former

Victory in Tennessee—Babb

law, adoptees were allowed to have access to their records at the court's discretion, a system granting adoptees access to their records in an ad hoc and irregular manner. Birthparents received no notice that the adoptee would receive, or had received, his adoption records, and had no opportunity to file a "contact veto" in the event that they did not want to be contacted. Since no law in Tennessee ever guaranteed confidentiality to birthparents, any person or agency who fostered such a belief without explaining the limitations misled birthparents.

"Access to adoption records violates the rights of adoptive parents because they, too, have been promised confidentiality." Adoptive parents divulge private and personal information in the adoption home study process based on the promise that such information will remain sealed and confidential, according to counsel for the plaintiffs. The plaintiffs expressed the belief that the Act will deter adoptions due to the disclosure of personal information contained in the adoption home study. Adoptive parents Russ C. and Kimberly C. stated that they were assured that their information would "remain confidential and... sealed," and that had they known that one day their home study might be obtained by their son's birth family members, they would have reconsidered their decision to adopt him. Under the Tennessee law, however, home studies are not accessible.

"Open adoption laws have resulted in a 51% decrease in adoptions in Australia and a 67% decrease in Great Britain." The plaintiffs argued that the Act would cause a decrease in adoptions and corresponding increase in abortions, citing three state court decisions from the 1970's which speculate, too, about a connection between abortion and open adoption. All such speculations were unsupported by any hard evidence establishing such a connection, although proponents of sealed adoption records often cite such "facts." In its October 1995 *National Adoption Reports*, for example, the National Council for Adoption (NCA) cited these same "statistics." The argument that openness in adoption increases abortions is one that lures ill-informed supporters of the right to life into the open records debate, usually engaging them on the side of the closed records, thanks to such bogus claims.

But according to Barbara Flett, Registrar of Births, Deaths and Marriages in Australia's most populous state, New South Wales, adoptions have continuously declined since 1972. Before the unsealing of adoption records in 1991, adoptions declined from 4,564 in 1972 to 688 in 1990, an 85 percent decline. The rate of decline after 1990 shows no significant change from the previous decline, indicating that the unsealing of adoption records had no significant effect on the numbers of adoptions—and certainly not the "51% decrease in adoptions" claimed by the plaintiffs—or the NCA.

According to correspondence between AAC Legislative Committee legal counsel, Nancy Marcus Newman, and Mrs. P. Phillips, Adoption Children's Services Social Care Group at the Department of Health in London, "There is no research data that suggests that the decline in adoptions can be linked to the opening of adoption records. It is generally accepted that the decline is a reflection of the change in social attitudes both to single parents and to children born outside marriage, and to an increased awareness of contraceptive advice" (February 20, 1996). Phillips also stated that "there is little evidence either through research or anecdote to indicate that women chose abortion over adoption on the grounds of confidentiality." In his letter to Newman, Mr. Phillip Whitehead, member of the European Parliament and one of the sponsors of Great Britain's 1975 Children's Act allowing access to adoption records, characterized "the suggestion that there has been a decline in the number of adoptions as a result of the opening of the past records of adoptees as quite bizarre." Whitehead also commented on the open adoption records in Scotland which, since 1935 have showed "no evidence of the kind of horror stories dreamed up by the popular press about adopted children allegedly turning up on the doorsteps of one or both of their natural parents. Quite the contrary."

(continued on next page)



L. Anne Babb

Victory in Tennessee—Babb

(continued from previous page)

The NCFA has written that, in Great Britain, "...the decline following the opening of adoption records was 67% in ten years" (*National Adoption Reports*, Oct. 1995, p. 9), a statistic given again in the plaintiffs' complaint. Although Scotland opened its adoption records in 1930 and England and Wales opened theirs in 1976, the plaintiffs and the NCFA point to an alleged trend beginning in 1986, a date irrelevant to the unsealing of adoption records that occurred some ten years earlier. The actual statistics received from the British Government by Fred Greenman, Esq., showed that if opening adoption records had any effect, "it was to slow a decline in adoptions which had commenced almost a decade earlier." Annual adoption figures for England and Wales from the U.K. Registrar General and the U.K. Office of Population Census and Surveys show that adoptions

of illegitimate children in England and Wales declined continuously from 14,461 in 1968 to 2,910 in 1984. According to Greenman, from the start of the decline in 1968 until 1976, when adoption records were unsealed, the relevant adoptions declined from 14,641 to 4,777, a de-

cline of 67 percent in eight years under sealed records laws. In the following eight years, after the records were unsealed, adoptions declined to 2,910, a decline of 39 percent. In other words, if the unsealing of adoption records had any effect in England and Wales at all, it was to reduce the decline in adoptions, or to increase adoptions over the numbers that otherwise would have been obtained. Finally, statistics compiled by the Alan Guttmacher Institute regarding the rates of abortion in England and Wales show a continuous increase in abortions. In 1974 through 1976, when the opening of adoption records was discussed in Parliament and put into effect, abortions and abortion rates actually decreased. Abortion rates thereafter fluctuated. Thus, if the unsealing of adoption records in England and Wales had any impact on abortions, it was to reduce their number.

If the unsealing of adoption records in England and Wales had any impact on abortions, it was to reduce the number of abortions.

"The Tennessee law violates the right of privacy as guaranteed by the Fourteenth Amendment of the U.S. Constitution." The plaintiffs said that the birthparents' right to privacy, namely their right to the nondisclosure of personal information, is constitutional. According to Robert Tuke, adoptive father and former Tennessee Adoption Study Commissioner, "the disclosure at issue is not to the public, but to the birthparent's own adult child, and the principal 'personal information' disclosed is the identity of that child's parent." Tuke wrote that neither the Tennessee law nor the constitutions of that state or the U.S. "has ever made that information private from the child." Paternity proceedings seeking to establish the identity of a child's father have never been found to be unconstitutional. As well, in most states courts may release the parent's information whenever such release is in the best interest of the adopted person. Finally, the Supreme Court and the 6th Circuit do not recognize the constitutional right to the nondisclosure of personal information.

The Tennessee adoption records access law carefully balanced the birthparents' privacy interests with the adopted person's interest in accessing his or her records, according to Tuke, and also gave birthparents greater protection than they had under the former law. Under the new law, birthparents may file a contact veto that, if violated by the adoptee or person acting on his or her behalf, would result in criminal liability for the violator—a right not given to birthparents under the former law. As well, the Tennessee law makes public disclosure of any information obtained under the Act a criminal offense, in addition to providing civil liability for defamation. Finally, the new law also excludes from disclosure any information arising from protected client-professional relationships. None of the information obtained through crisis pregnancy counseling would be part of the records under Tennessee law.

Tennessee Legislators: In Step, or Out?

When Tennessee enacted adoption legislation that more fairly balanced the interests of all the parties to an adoption, it acted in a way that closed records proponents have characterized as out of step with the majority of American states.

Victory in Tennessee—Babb

Indeed, in all but a few states, the original birth certificate remains sealed to the adult adoptee, except by court order. What opponents of adoption records access fail to tell our legislators, judges, and the public at large is that in every other post-industrialized nation of the world, save a few Canadian provinces, the original birth certificate is available to the adult adoptee. They also try and obscure the fact that most of the national adoption, child welfare and professional groups which are most knowledgeable about the history of adoption and experienced in working with adoptees and birth and adoptive parents all support adult adoptee access to the original birth certificate. The Child Welfare League of America, North American Council on Adoptable Children, National Association of Social Workers, National Adoption Center, and Concerned United Birthparents, along with the AAC, all support the adult adoptee's right to have his or her original birth certificate. In addition, many religious organizations have expressed support for adoptees knowing their identity at birth.

In a survey of its adoptive families a few years ago, this country's largest adoptive parent organization, Adoptive Families of America, found that the majority of adoptive parents supported such adoption records access as well.

The plaintiffs and their attorneys would have America believe that our nation's adoption laws are rooted in ancient Roman practices, since adoption was unknown in common law and is a statutory creation in the United States. What they fail to state is that Roman adoption laws existed only as a means of continuing the adopter's family. They fail entirely to recreate for those not knowledgeable about adoption this country's shameful adoption history, in which apprenticeship was the model for early adoption practices and early American orphans were in great demand due to the shortage of labor, not because our ancestors had any widespread concern for orphans. They forget that the earliest adoption statutes in the United States resulted from the need to control the wholesale distribution of children to homes where they were used as cheap labor, or that less than one hundred years ago in this country, "baby farmers" legally made their living through the boarding and sale of infants, while older children were housed with adults in

institutions for petty criminals, the insane, the infirm, and poor houses.

Opponents of unsealing the original birth certificate for adult adoptees don't admit that adoption records in this country have been sealed for little more than 40 years. Nor do they acknowledge that legislative and institutional policies of sealing adoption records resulted from a psychological view of illegitimacy that saw the child as tainted with "bad blood" and the unwed mother as neurotic and genetically inferior, and both with the need to be protected from their pasts by the sealed record. Opponents to the cause of equal birth certificate access also fail to admit that it was a mere 41 years ago that the Child Welfare League of America's national conference laid the groundwork for establishing a national adoption policy that considered the best interests of children, not adults, first, and that the sealed record predates the best interest of the child standard by twenty years. America's closed records laws are based on untrue constructs of the characters, needs, and rights of adoptees, birthparents, and adoptive parents. That Tennessee legislators had the courage to examine our shameful adoption history and take steps to make amends is to their credit. Let us hope that all states follow their lead.

L. Anne Babb is the mother of ten children, six of them adopted with special needs. She is the recipient of numerous awards for her work on behalf of children, including the "Jefferson Award" from the American Institute for Public Service and the 1996 "Adoption Activist of the Year Award" from the North American Council on Adoptable Children.

What opponents of adoption records access fail to tell...is that in every other post-industrialized nation of the world, save a few Canadian provinces, the original birth certificate is available to the adult adoptee.

Are you interested in helping to fund the continuing legal battle? Please send donations to TENOR, care of the AAC. Updates on the case are posted on the AAC Web site Anne developed. See masthead for addresses.

An Open Letter to the Pro-Life Community

by John C. Sonne, M.D.

Please Support Adoptees' Access to Their Original Birth Certificates

As a dedicated pro-lifer, and also a psychoanalyst and family therapist who has worked with many abortion survivors and adoptees in therapy, and who has written extensively on the psychodynamics of abortion and adoption, I am writing to urge you to support passage of laws being currently proposed in several states which would authorize adoptees, who currently are misidentified in falsified birth certificates as biological children of their adoptive parents, to have access to their original birth certificates. As adoption law now stands, access is illegal in all states of the Union except Kansas and Alaska, and most recently, Tennessee.

Abortion Will Not Increase With Access

The importance of adoptees having open access to furthering the goals of the pro-life community cannot be overemphasized. Some of you may not be aware of the fact, since there has been little coverage of this in your newsletters, that there has been intense opposition to these bills by some pro-life groups based on the presumption that their passage would result in an increase in abortion, and a decrease in adoption. This was the prediction of Willke (1990), then president of National Right to Life, in his testimony to the Ohio legislature in which he strongly opposed passage of an open access bill, which was, indeed, defeated. Not only is this presumption of an increase in abortion unsupported by available data, the data documents the opposite. Countries with open access actually have a lower rate of abortion than those who have sealed records (Forest, 1996). As for adoption, a Canadian study (Daly and Sobel, 1993) showed that both abortion and adoption were decreased. The authors report that the decrease in adoption was due to the fact that more unwed pregnant women are keeping their babies than was the case in past years, and was not due to an increase in abortion, which in fact also decreased. Ridgeway (1995) reports similar data and conclusions from England.

Further support of the prediction that open access would result in an increase of abortions and a decrease in adoptions was given in the

form of anecdotal reports at the legislative hearings this spring in Trenton, New Jersey, that some birthmothers had actually threatened that unless birth records were sealed they would abort their unborn instead of relinquishing them for adoption. The validity of these anecdotes is also not supported by evidence. To the contrary, Feinstone (1996), found in a survey of seven adoption agencies in New Jersey that not one of them had ever had a birthmother who had expressed such a threat. It has been my clinical experience that a more common reason some women choose abortion over adoption, in addition to other reasons, privacy upon adoption being an unlikely one, is because they fear going through the pain of relinquishing their new-born child. N. M. (1996), writing in the *Adoption Triad Forum*, speaks to this, describing her adoption relinquishment as, "by far the single most painful event in my life. I've always felt strongly that abortion was wrong, and in an ultimate sense I still do. Yet after going through one unplanned pregnancy that 'ended' with my son being adopted, I *knew* I could not survive that kind of pain one more time when I became pregnant just two months short of my wedding." (Italics by N.M.) She chose to abort her child.

Closed records actually increase the fear of relinquishment, encourage abortion and discourage adoption, because they confirm to birthmothers that once they have seen their children and have given them up, they will never see them again. Most birthparents miss their children, worry and grieve about them, and would welcome contact. Gioglio (1996) of the New Jersey Division of Youth and Family Services reported that out of 322 birth family

(continued on next page)

The pro-life movement has risen against citizens advocating access to original birth certificates and other law changes designed to make adoptions more open, honest and humane. One would think those so committed to the value of life and who want to discourage abortions would be our biggest supporters—but they have been seduced by the myth and fallacy NCEA promotes to maintain the lucrative adoption business; "Openness in adoption will increase abortions."

In his letter, Dr. John Sonne, an avid pro-life advocate, appeals to those in the pro-life movement to reexamine their stance. To date he has received no reply to his letters.

Letter to Pro-Life—Sonne

tained in their position of opposing physical abortion and at the same time supporting psychological abortion. Dedicated to saving the lives of unborn children, but opposed to adoptees' right to know, and to their having access to their original birth certificates, some pro-lifers are paradoxically unwittingly sanctioning a psychological abortion of the minds and souls of some of the same children whose lives they may have saved, but who happened to have become adoptees after having been born.

If you have not been aware of the importance of open access, or the controversy surrounding it, please reflect on the foregoing. If you are opposed to access, please reconsider your position, and if you change your mind, please communicate this to your organizations. I know the intentions of many who are opposed to open access are good, but saving the physical lives of the unborn is not enough if their souls and minds and their spiritual lives are damaged subsequently. The adoptee is not magically born again either physically or psychologically by the act of sealing his original birth certificate and issuing a false one. To the contrary, his birth is denied and erased. His original identity is *psychologically aborted*. The same might be said of the identities of birth and adoptive parents, and also their nuclear and extended families. I believe that pro-life opposition to passage of these bills is not only harming adoptees, birth and adoptive parents, and their families, but that it will also harm the pro-life movement in the long run, as more and more people realize the contradictions contained in a position such as this taken by anyone who professes respect for the sanctity of life.

References

- Daly, K.J., and Sobol, M.P. (1993). *Adoption in Canada: Final Report*. National Adoption Study, University of Guelph, Guelph, Ontario N1G 2W1.
- Feinstone, L. (1996), Survey of seven adoption agencies: No instances of threat by pregnant women to abort unless guaranteed privacy upon adoption. Personal communication, July 2.
- Forest, B. (1996), *Chart of Abortion Rates in Countries with Open Access to Original Birth Certificates*. New Jersey Assembly Community Services Committee, March 4th.
- Gioglio, G. (1996), *Report of the New Jersey Division of Youth and Family Services*. New Jersey Assembly Community Services Committee, March 4th.
- N. M. (1996), *Letter. Adoption Triad Forum*, 5, No. 3, p.5.
- Ridgeway, J. (1995), *Letter on England's Adoption Act of 1976 to Pamela Hasegawa*. New Jersey Coalition for Openness in Adoption, November 29.
- Sonne, J.C. (1996), Interpreting the dread of being aborted in therapy. *International Journal of Prenatal and Perinatal Psychology and Medicine*, 8, No. 3, 1-22.
- Willke, J. C. (1990). Testimony, State Senate Hearing, HB 256, Columbus, Ohio. August 22. *National Right to Life Committee, Inc.*, Washington D.C.
- This letter to the pro-life community was written by John C. Sonne, M.D. for publication in Decree, newsletter of the American Adoption Congress. Doctor Sonne is a psychoanalyst and family therapist who has written extensively on issues of custody, adoption, foster care, abortion, and the deleterious effects of third party insurance on psychotherapy. He is currently Clinical Professor of Psychiatry at the Robert Wood Johnson Medical School of the University of Medicine and Dentistry of New Jersey, Senior Attending at the Institute of the Pennsylvania Hospital, and Director of Family Therapy at Cooper Hospital in Camden. In addition to his research and teaching activities, he has been in private practice for over forty years. Doctor Sonne presented testimony in support of A-742 and S-287 to the New Jersey Assembly Community Services Committee on March 4th, 1996, and to the New Jersey Senate Committee on Women's Issues, Children, and Family Services, on March 14th, 1996. Correspondence should be addressed to 443 Shady Lane, Moorestown, NJ 08057. Phone and fax, 609-235-3558.*

Catholic Social Services for Montana

Box 907 • 25 S. Ewing Street • Helena, Montana 59624 • (406) 442-4130 • FAX (406) 442-4192

EXHIBIT 6
DATE 1/24/97
HB 163

Testimony in Support of HB 163
Presented to House Judiciary Committee
January 24, 1997
by: Marilyn McKibben, Director
Catholic Social Services for Montana, Inc.

I appreciate the opportunity to testify in support of HB 163 which we believe embodies many improvements over the existing laws pertaining to adoption in Montana. At Catholic Social Services we have been providing adoption services since the 50s. We have counseled approximately 3,200 pregnant women and teens, and have been involved in the adoption of 1,700 children to date. Our primary concern is always the best interests of the children, while balancing the rights and responsibilities of the birthparents and adoptive parents. The most compelling aspect of this proposed legislation is its fairness and, if laws can be called "sensitive," I believe HB 163 to be just that. It is sensitive to the vulnerability of all parties while safeguarding the integrity of the adoption process. No set of laws can contemplate all possible unique circumstances, but HB 163 is constructed with a wide enough scope to accommodate even the most unusual situations.

In some respects, HB 163 makes the adoption requirements more easily accomplished without disregarding the rights of anyone concerned. In areas which have been somewhat confusing under existing law, HB 163 clarifies and establishes exact procedures.

In closing, I encourage the passage of HB 163 because it will serve as a balanced, broad based, sensitive, fair body of law to protect the interests of all Montana citizens.

Thank you for the opportunity to address you. I would be happy to answer any questions.



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Hall & Hall Building
1222 N. 27th Street, Suite 101
Billings, MT 59101
Phone: 252-3399 - FAX 252-9173

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554 West Broadway
Missoula, MT 59802
Phone: 329-5629

Branch Office:
1601 2nd Ave. North
P.O. Box 7410
Great Falls, MT 59406
Phone: 771-7805



7-08

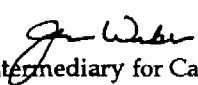
Catholic Social Services for Montana

Box 907 • 25 S. Ewing Street • Helena, Montana 59624 • (406) 442-4130 • FAX (406) 442-4192

EXHIBIT 7
DATE 1/24/97
HB 163

MEMORANDUM

TO: 55th Legislative Judiciary Committee

FROM: Jan Weber 
Confidential Intermediary for Catholic Social Services for Montana

RE: HB 0163.01

DATE: January 24, 1997

This testimony is written in support of sections 142, 143, 144, 145, 146, and 164, all of which pertain to the confidential intermediary and open records provisions of House Bill 163.

As you know, the confidential intermediary process was ordained by the 1995 Legislature. Since becoming effective in October 1995, it has provided a much needed and long-awaited avenue for people desiring contact with members of their birth families who were separated due to adoption.

This process offers a balance between fully open and sealed adoption records and provides equal access for adoptees, birthparents, and their extended families. Each side has the opportunity to initiate the intermediary system. Once contacted by the intermediary, the found person is able to make a decision about whether or not he or she wants contact with the petitioner.

Because the initial contact is done in this way, the found person does not have to worry about his or her confidentiality being jeopardized. Time is given to make a choice based on reflection and the current circumstances in one's life -- not pressure from the petitioner. To put it mildly, a reunion represents a major life change and has a large ripple effect.

In most cases, the found person will agree to contact. I have worked on several cases which have lead to successful reunions. One adoptive mother told me how relieved she was to meet her son's birthmother. Both the birthmother and the son share a learning disability and many personality traits. It has been very healing for this son to share his birthmother's history as well as his genetic background. I recently spoke with a birthmother who was weeping for joy when I was able to share



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confidential information about her birthchild. She was able to speak to her one and only son for the very first time on her 45th birthday.

However, there are times when both adoptees and birthparents refuse contact or need time to adjust to having this new person (and complete extended family) in their life. In one instance a birthmother refused contact because she felt her safety and the safety of the adoptee would be compromised if they were reunited. She adamantly objected to her privacy and her life being disrupted. Other birthparents have chosen not to share information about this experience with their current families and fear the repercussions of this disclosure. An adoptee denied contact with her birth family because she feared for the frail health of her elderly adoptive parents.

These and other situations like them beg the question of, "What would have happened if these people had been allowed to contact the other party directly?" Both sides of the equation sometimes have deeply felt reasons why they do not want contact. In these cases the found person's wishes are respected, confidentiality is kept in tact, and the case remains closed.

Using the intermediary system we are able to offer another service to the found person. If they want contact, but are not yet willing to provide identifying information to the petitioner, we forward correspondence between the two until they are ready to correspond directly. This option is utilized as a means of getting to know the other party and generally leads to full disclosure.

As you can imagine, learning that someone is searching for you is an enormous shock. Adoptees and birthparents are often elated, filled with dread, uncertain, curious, scared, and excited - all at the same time. Many of them need time to adjust to the fact that the person they've imagined and thought about so many times is a real live, flesh and blood person. To the birthmother, the adult child is no longer a frozen image of that baby she only caught a glimpse of and may not have been able to hold. To the birthfather, this now-adult child he never saw and didn't have a say about becomes more than a reminder of his relationship with the birthmother. To the adoptee, the birthparents are no longer just a trite story about a young couple without resources. It is incredible to the one found that the

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The Law Library does not have page 3 of Exhibit 7

Dated 1-24-97

Please check the Montana Historical Society for the original
document

and birth mothers would have been doubled if the initial contact had been between them. Yet, the birthmother had an absolute right to know that her son is gone.

In summary, one school of thought is that all records should be open and that every adoptee and birthparent has the inherent right to know the identity of the other. Another school adheres to the principle of completely closed records with no opportunity for reunion even if that is what is desired by both sides. I submit that the confidential intermediary system provides a crucial balance in this emotionally charged issue. It also upholds the promises made to birth and adoptive families that their confidentiality would be kept in tact. Yet it allows for reunions if that is what is desired on both sides. I encourage the legislature to adopt the aforementioned provisions of this bill as drafted.

Below I have included some statistics regarding the number and results of completed searches we have conducted since October 1995. I would be happy to answer any questions you may have. Thank you for your consideration.

<u>Petitioner</u>	<u># of Cases</u>	<u>No Contact</u>	<u>Corresponding through CSSM</u>	<u>Contact</u>	<u>Found Person Deceased</u>	<u>Information Request</u>
Adoptee	33	9.1%	12.1%	48.5%	18.2%	12.1%
Birthparent	18	11%	5.6%	77.8%	5.6%	-
Birth Extended Family	5	40%	-	60%	-	-
Adoptive Extended Family	2	100%	-	-	-	-

HE
12/97

EXHIBIT 8
DATE 1/24/97
HB 163

**STATEMENT OF WILLIAM P. DRISCOLL
TO THE MONTANA HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE
AS A PROPONENT OF HOUSE BILL 163**

My name is William P. Driscoll, and I am a lawyer who has represented and advised adoption agencies, primarily Catholic Social Services, and individuals in numerous matters pertaining to adoption since 1985. I am appearing before this Committee in my individual capacity based on my experience as an attorney with a good deal of experience in this area of law. I support the enactment of House Bill 163 to revise and reorganize the law of Montana governing adoption. The bill is the product of much work by a Montana Department of Public Health and Human Services interim task force over the last two years. It thoroughly addresses the subject of adoption. It revises and reorganizes statutory provisions from various Acts in the existing Montana Code into one comprehensive set of statutes that thoroughly address the subject of adoption. Perhaps most importantly, it takes into account the substantial development in case law from both state and federal courts over the last twenty years addressing the rights and responsibilities of the various parties with interests at stake in adoption. I urge you to give House Bill 163 your favorable consideration.

Handwritten initials

DEUTSCH KLAGSBRUN & BLASBAND
ATTORNEYS AT LAW

EXHIBIT 9
DATE 1/24/97
HB 163

DAVID BLASBAND
ALVIN DEUTSCH
FREDERICK F. GREENMAN
EDWARD KLAGSBRUN
NANCY F. WECHSLER
RICHARD A. WHITNEY

LOWELL D. KERN

800 THIRD AVENUE
NEW YORK, NY 10022-7604

(212) 758-1100

FACSIMILE: (212) 593-3560

January 21, 1997

House Judiciary Committee
Montana Legislature
State Capitol
Post Office Box 201701
Helena, Montana 59620-1701

Re: House Bill No. 163, Montana Adoption

Dear Committee Members:

Exhibit# 9 - multipage testimony
by American Adoption Congress
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

I am an attorney and a birth father who surrendered my daughter for adoption in 1959 and was fortunate enough to be found by her five years ago. I write on behalf of the American Adoption Congress to correct certain misstatements in NCFA's comments concerning this bill, which were submitted by Mr. Vidal and Mr. Purtill. AAC and I learned of the pending legislation and of NCFA's comments only last Thursday, January 16, and this response must necessarily be hurried.

At the request of the American Adoption Congress, I presently assist (*pro bono*) in representing a group of birth parents, adoptive parents and adoptees as *amici curiae* in an action entitled *Doe v. Sundquist*, pending in the Federal District Court in Nashville, Tennessee and in the U. S. Court of Appeals for the Sixth Circuit, in which the *amici* seek enforcement of a recent Tennessee statute which opens certain adoption records to inspection by adult adoptees as a matter of right. The National Council for Adoption ("NCFA") has also appeared as an *amicus curiae* in that case, opposing enforcement of the statute.

NCFA claims that opening adoption records to adoptees in England and Australia "led to a nearly fifty percent decline in adoptions" (NCFA Comments, pp. 3, 8). That statement is false. In both countries, adoptions had declined steeply for many years before adoption records were opened. The declines obviously were not caused by the subsequent opening of records; indeed, the figures for England and Wales indicate that opening records, if it had any effect, slowed the decline and thereby increased the number of adoptions over the number that would otherwise have occurred.

FB
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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 1/24/97

BILL NO. HB 163

SPONSOR(S) Rep. Menaker

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
^{6774US} JETF MANAKA 1223 7 th N	ADOPTION TASK FORCE SELF, RMAAF	✓	
Ann G. Key PO Box 8005	DPHHS	X	
Jan Weber P.O. Box 10457 White	Catholic Social Service	X	
Helen Christensen 169 Briarwood Helena	MT Catholic Conference	—	—
^{909 Kells St} Arlis Kay Loberg Deer Lodge, MT 59722	Foster Parent (MT)	✓	
Kimberly Krudolfer	Self, Adoption Task Force	✓	
Marilyn McKibben	Catholic Social Services	*	
Linda Fagenstrom	Lutheran Social Services	✓	
Darcy Crum	Self, Adoption Task Force	✓	
LINDA GALLOWAY	FOSTER/ADOPTIVE SELF - PARENT	✓	
Laroy Loberg	SELF - MFAPA SECRETARY	✓	
Mary Shippen	Self		
D Mark Rocks	LDS Social Services	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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wp:vissbcom.man

CS-14

Harold K. Shuck
Bill Driscoll
Laurie Kachul
Robert L. Torres
Beth Stinson

DPHHS
self
Christian Coalition
MT. Chap. NASW
DPHHS

✓
✓
✓
✓
✓

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 10, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 292, HB 416, HB 415
POSTED 2/5/97
Executive Action: HB 163 TABLED
HB 243 DO PASS AS AMENDED

HEARING ON HB 292

Opening Statement by Sponsor: REP. EDWARD J. "ED" GRADY
{Tape: 1; Side: A; Approx. Time Count: 1.4} EXHIBIT 1

Proponents' Testimony:

LARRY CLIFFORD, East Helena Police
{Tape: 1; Side: A; Approx. Time Count: 1.0}

Further Proponents:

DUANE SPETHMAN

{Tape: 2; Side: B; Approx. Time Count: 36.7 - end of tape}

RICHARD OVERCAST

{Tape: 3; Side: A; Approx. Time Count: 0.1}

Questions From Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Count: 1.0 - 38.2; Comments:
Exhibits 10 and 11 were distributed during the question portion
of the hearing.} EXHIBITS 10 and 11

Closing by Sponsor: REP. CURTISS

{Tape: 3; Side: A; Approx. Time Count: 38.3}

EXECUTIVE ACTION ON HB 163

Motion: REP. BOHARSKI moved HB 163 DO NOT PASS.

{Tape: 3; Side: B; Approx. Time Count: 0.1; Comments: REP. MC GEE
assumed the chair.}

Discussion:

{Tape: 3; Side: B; Approx. Time Count: 1.2 - 6.3; Comments:
Exhibit was distributed during the discussion period.} EXHIBIT 12

Motion/Vote: REP. DEB KOTTEL moved to table HB 163. The motion
carried 19 - 1, REP. MC CULLOCH voting no. (REPS. HANSON, AHNER,
CLARK, TASH, and WYATT voted aye by proxy.)

EXECUTIVE ACTION ON HB 222

Motion: REP. SHIELL ANDERSON moved HB 222 DO PASS.

{Tape: 3; Side: B; Approx. Time Count: 10.9}

Motion/Vote: REP. GRIMES moved to amend HB 222. EXHIBIT 13
The motion carried by unanimous voice vote.

Motion: REP. ANDERSON moved HB 222 DO PASS AS AMENDED.

{Tape: 3; Side: B; Approx. Time Count: 12.6}

Discussion:

{Tape: 3; Side: B; Comments: The tape machine was unplugged, time
count no longer accurate for Tape 3, Side B.}

Motion: REP. KOTTEL moved to amend HB 222.

Discussion:

{Tape: 3; Side: B; to Tape 4; Side A; 1.1 Comments: This set of
minutes is completed on a 60-minute tape. Chairman Clark resumed
the chair.}

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2/10/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

FEB
1997

EXHIBIT 12
DATE 2/10/97
HB 163

February 1, 1997

House Judiciary Committee
1 Capital Station
Helena, MT

Dear Members:

I am writing to support the bill in regard to fathers getting notice of paternity. I became aware of this bill from reading the article in the Great Falls Tribune this morning.

My son is in a similar situation as the man described in the news article. He is now married, has two children and is struggling to support his family. He is angry with the Agency for waiting for six years before notifying him that he may be a potential father. Had this all been taken care of six years ago and he had been shown to be the father without a doubt, he would have accepted the responsibility. I have many concerns as to how the Child Support Enforcement Division conducts their business.

A. POTENTIAL FATHERS BEING NAMED WITHIN A REASONABLE AMOUNT OF TIME. I understand the need to have the men who father children pay for their support. What I don't understand is why the potential fathers are not notified immediately upon the child's birth. The father has the right to know who his child is and the child has the right to have a relationship with that father from the day he/she is born, not five, six and even ten years after he/she is born, which is exactly what is happening.

B. POTENTIAL FATHERS RIGHTS. Potential fathers (all at the same time) being notified that they have been named. All potential fathers should have the right to the results of the other potential fathers. Names do not have to be given out, give every potential father a code. Everyone who is accused should have the right to know why the Agency has come to its conclusion. They have the right to know for sure they are the closest match. The child has the right to know that the man paying his/her support, and calling him "daddy" really is his/her "daddy", not someone who was within a range of what the Agency decides qualifies someone because you were fourth on a long list and happen to fall within that range, or because you know you are not the father but you failed to fill the paperwork out correctly.

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C. **EXTENSIVE BLOOD TESTS.** The blood test is not extensive. In other words, there are only so many factors that the Agency requests from the center in Baltimore. I have talked to the DNA center and state's requirements are different to have you named the father. Extensive testing is the only way to determine, to be as accurate as one could hope without being 100%, who the potential father is, and yet the Agency does not require this.

D. **THE AGENCY'S RESPONSIBILITY TO THE PEOPLE OF THE STATE OF MONTANA.** The agency (and in dealing with them, I know this for a fact) seems to think they are above reproach. Fathers are served with papers stating they are named as a potential father. If they do not respond, they are automatically named the father. If they do not fill out the paperwork stating they do not believe they are the father, along with their financial situation or consent to a blood test they are automatically assumed to be the father. That is totally unrealistic. Naming someone a father of a child because he doesn't send you his financial statement can never be valid, and yet the paperwork that is sent to potential father states that. How many men have been named the father of a child and are paying child support simply because the agency has named them such and how many children believe someone who is not their father to be?

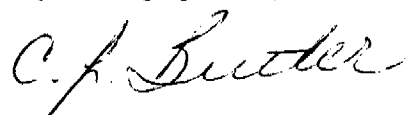
We were a society tired of men fathering children and not supporting them and now we have gone 180 degrees and we are now a society that tells a woman she can have as many babies as she wants, never name a father on the birth certificate, list as many fathers as they can so that they can draw welfare as long as they can before the Agency finds a potential father. We now have a society that allows an Agency to withhold information from a potential father until they get around to accusing him or it benefits them or the mother.

Allowing the agency to continue to act irresponsible toward society destroys families, causes divorces, causes hardships on those who were not aware they had a child and now have a family to raise and support. It takes away the right and responsibility of the father to support this child. It does not make the mother responsible to the child and it does not make the Agency responsible to the people of the state.

FFB
FFC

I believe my concerns are valid concerns for the potential fathers/or fathers and for the children. I would like to thank you for taking the time to read this.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C.J. Butler". The signature is written in dark ink and is positioned above the printed name.

C.J. Butler

EP
FX

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 12, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski was excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 365, HB 396; POSTED 2/6/97
Executive Action:	HB 396 DO PASS
	HB 337 DO PASS AS AMENDED
	HB 352 DO PASS AS AMENDED
	HB 346, HB 415 TABLED
	HB 325, DO PASS AS AMENDED*

EXECUTIVE ACTION ON HB 352

Motion: REP. ANDERSON moved HB 352 DO PASS.

{Tape: 1; Side: A; Approx. Time Count: 4.3; Comments: This set of minutes is recorded on 90-minute tapes.}

Questions From Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Count: 24.2 - 27.3}

Closing by Sponsor: REP. GRIMES

{Tape: 3; Side: A; Approx. Time Count: 27.4}

EXECUTIVE ACTION ON HB 396

Motion/Vote: REP. GRIMES moved HB 396 DO PASS. The motion carried 16-0. (REPS. BOHARSKI, TASH, AHNER and HANSON were absent for the vote.)

CHAIRMAN CLARK appointed REPS. AHNER, MOLNAR, SOFT, SANDS and KOTTEL to the subcommittee for HB 163.

MOTION/VOTE: REP. WYATT MOVED TO ADJOURN. THE MOTION CARRIED BY unanimous voice vote.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 19, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 571, HB 572, HB 577, HJ 28
POSTED 2/18/97
Executive Action: HJ 28 DO PASS AS AMENDED
HB 429 DO PASS AS AMENDED
HB 416 TABLED
HB 323 DO PASS

HEARING ON HB 571

Opening Statement by Sponsor: REP. HALEY BEAUDRY

{Tape: 1; Side: A; Approx. Time Count: 2.3; Comments: This set of minutes was recorded on 90-minute tapes.}

Discussion:

{Tape: 3; Side: A; Approx. Time Count: 22.6}

Vote: The motion carried 16 - 3; REPS. ELLINGSON, SANDS and HURDLE voting no. (REP. MC CULLOCH was absent for the vote.)

EXECUTIVE ACTION ON HB 416

Motion: REP. BOHARSKI moved HB 416 DO PASS.

Motion/Vote: REP. MC GEE moved HB 416 be tabled. The motion carried 14 - 6; REPS. WYATT, MC CULLOCH, HANSON, MOLNAR, BOHARSKI and CLARK voting no.

Discussion: HB 163 was discussed and action postponed.

E ACTION ON HB 323

Motion: HB 323 DO PASS.
{Tape: Time Count: 28.7}

Discuss:
{Tape: Time Count: 29.1 - 30.6}

Motion: REP. DIANE SANDS moved to amend HB 323 EXHIBIT 4
{Tape: 3; Side: A; Approx. Time Count: 30.7}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 30.8 - 37.2; Comments: Discussion included whether the amendment was outside the scope of the title of the bill.}

Vote: The motion failed 7 - 14; REPS. WYATT, MC CULLOCH, PEASE, KOTTEL, HURDLE, SANDS and ELLINGSON voting aye.
{Tape: 3; Side: A; Approx. Time Count: 37.3}

Motion: REP. ELLINGSON moved amendments to HB 323. EXHIBIT 5
{Tape: 3; Side: A; Approx. Time Count: 38.6}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 39.3-Tape 3; Side B; 4.3}

Vote: The motion failed 6 - 14. REPS. ELLINGSON, PEASE, HURDLE, SANDS, KOTTEL and MC CULLOCH voting aye.

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 5.2}

Vote: The motion to DO PASS HB 323 carried 15 - 5; REPS. PEASE, SANDS, KOTTEL, ELLINGSON, and HURDLE voting no.

Motion/Vote: REP. MC GEE MOVED TO ADJOURN. The motion carried by unanimous voice vote.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 20, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski was excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action: DO PASS:
HB 159, HB 299, HB 571, HB 577
DO PASS AS AMENDED:
HB 276, HB 303, HB 306, HB 453
HB 540, HB 553, HB 572
TABLED:
HB 270, HB 454, HB 528

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 1.8 - 14.0}

Motion: REP. BOHARSKI moved to amend HB 553 to insert "reasonable" on line 13.

{Tape: 4; Side: A; Approx. Time Count: 14.1}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 14.5}

Vote: The motion carried 19 - 1; REP. BERGMAN voted no by proxy.

{Tape: 4; Side: A; Approx. Time Count: 14.6}

Motion/Vote: REP. MC GEE moved HB 553 DO PASS AS AMENDED.

The motion carried 14 - 6; REPS. MC CULLOCH, PEASE, SANDS, KOTTEL, ELLINGSON and HURDLE voting no. (REP. SANDS voted no and REP. BERGMAN voted aye by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 16.1 - 17.1}

EXECUTIVE ACTION ON HB 276

Motion/Vote: REP. KOTTEL moved to reconsider HB 276. The motion carried 11 - 9; REPS. WYATT, MC CULLOCH, MOLNAR, PEASE, BOHARSKI, TASH, ANDERSON, MC GEE and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 18.3}

Motion/Vote: REP. KOTTEL moved HB 276 DO PASS AS AMENDED. The motion carried 16 - 4; REPS. WYATT, MC CULLOCH, TASH and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 21.9}

EXECUTIVE ACTION ON HB 163

Discussion: REP. SOFT said that HB 163 was exempt from transmittal requirements and that it would be left on the table.

{Tape: 4; Side: A; Approx. Time Count: 24.1}

EXECUTIVE ACTION ON HB 306

Motion/Vote: REP. MOLNAR moved to reconsider HB 306. The motion carried 12 - 8; REPS. BERGMAN, HURDLE, ELLINGSON, KOTTEL, SANDS, PEASE, MC CULLOCH and WYATT voting no. (REP. BERGMAN voted no by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 25.1}

Motion: REP. MOLNAR moved to amend HB 306.

{Tape: 4; Side: A; Approx. Time Count: 29.0}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 29.8 - 35.7}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 7, 1997, at 8 AM,
in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 46, SB 92, SB 110, SB 197
POSTED 2/24/97
Executive Action: SB 92 BE CONCURRED IN
SB 197 BE CONCURRED IN
SB 46 BE CONCURRED IN AS
AMENDED
SB 110 TABLED

HEARING ON SB 92

Opening Statement by Sponsor: SEN. DOROTHY ECK

{Tape: 1; Side: A; Approx. Time Count: 3.1; Comments: This set
of minutes is recorded on 90-minute tapes.}

Motion/Vote: REP. MOLNAR moved to amend page 3, line 16 and page 7, line 11. The motion carried 20 - 0.

Motion: REP. BOHARSKI moved SB 46 BE CONCURRED IN AS AMENDED.
{Tape: 3; Side: A; Approx. Time Count: 20.8}

Motion: REP. SANDS moved to amend page 3, lines 9 and 11 to restore to original language.

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 21.5-23.1; Comments: REP. SANDS withdrew the motion.}

Vote: The motion that SB 46 BE CONCURRED IN AS AMENDED carried 20 - 0. (REPS. WYATT and PEASE voted aye by proxy.) REP. MOLNAR will carry SB 46.
{Tape: 3; Side: A; Approx. Time Count: 23.3}

EXECUTIVE ACTION ON SB 110

Motion: REP. WYATT moved SB 110 BE CONCURRED IN.
{Tape: 3; Side: A; Approx. Time Count: 28.5; Comments: Potential amendments were discussed prior to the motion.}

Motion/Vote: REP. MC GEE moved to table SB 110. The motion carried 12 - 7; REPS. WYATT, MC CULLOCH, SANDS, HURDLE, PEASE, ANDERSON and SOFT voting no. (REP. PEASE voted no by proxy.)
{Tape: 3; Side: A; Approx. Time Count: 28.7}

{Tape: 3; Side: A; Approx. Time Count: 32.0; Comments: Amendments to HB 163 are ready for distribution and the bill will be reconsidered at a later date.}

MOTION/VOTE: REP. MC CULLOCH MOVED TO ADJOURN. The motion carried by unanimous voice vote.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By VICE-CHAIRMAN DAN MC GEE, on March 14, 1997,
at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Bob Clark, Chairman (R)

Members Absent: Rep. H.S. "Sonny" Hanson (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 216, SB 232, SB 277
POSTED 2/24/97
Executive Action: SB 44 and SB 216
BE CONCURRED IN AS AMENDED
SB 232 and SB 277
BE CONCURRED IN
HB 122 AMENDMENTS BE
NOT CONCURRED IN

EXECUTIVE ACTION ON SB 44

Motion: REP. ANDERSON moved SB 44 be reconsidered.

{Tape: 4; Side: A; Approx. Time Count: 7.4}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 7.5-22.9}

Vote: The motion carried 10 - 9; REPS. WYATT, ELLINGSON, MC CULLOCH, SANDS, PEASE, KOTTEL, MOLNAR, MC GEE and HURDLE voting no. REP. HANSON voted aye by proxy.

Motion: REP. BOHARSKI moved to reconsider the ELLINGSON amendments which were introduced before the previous action to table SB 44 on 3/6/97.

{Tape: 4; Side: A; Approx. Time Count: 26.1}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 26.3-Tape 4; Side B; 3.3}

Vote: The motion failed 5 - 13; REPS. BERGMAN, SOFT, TASH, ANDERSON and GRIMES voting aye.

Motion/Vote: REP. MOLNAR moved SB 44 BE CONCURRED IN AS AMENDED. The motion carried 16 - 4; REPS. MC GEE, CLARK (proxy), GRIMES and SOFT voting no. REP. HANSON voted aye by proxy. REP. ANDERSON will carry SB 44.

EXECUTIVE ACTION ON HB 163

Discussion:

{Tape: 4; Side: B; Approx. Time Count: 9.8 - 12.4; Comments: Amendments were discussed and further action was postponed by direction of the chairman.}

EXECUTIVE ACTION ON SB 168

Motion: REP. KOTTEL moved to table SB 168. The motion was not entertained by VICE CHAIR MC GEE by instruction from the chairman.

{Tape: 4; Side: B; Approx. Time Count: 12.5}

MOTION/VOTE: REP. WYATT MOVED TO ADJOURN. THE MOTION CARRIED BY unanimous voice vote.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 21, 1997, at
7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Chris Ahner

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 283, SB 314, SB 383, SB 308
POSTED 3/7/97
Executive Action: HB 163 action suspended

EXECUTIVE ACTION ON HB 163

Amendments/Discussion:

{Tape: 1; Side: A; Approx. Time Count: 1.0; Comments: This set of minutes is recorded on six 60-minute tapes.}

Motion: REP. WYATT moved HB 163 DO PASS.
{Tape: 1; Side: A; Approx. Time Count: 1.8}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 3.4}

Motion: REP. SOFT moved both sets of amendments. EXHIBITS 1-2
{Tape: 1; Side: A; Approx. Time Count: 5.0}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 5.3; Comments: REP. SOFT withdrew his motion.}

Motion: REP. SOFT moved the first set of amendments.
{Tape: 1; Side: A; Approx. Time Count: 5.9; Comments: EXHIBIT 1}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 7.3 - 15.5; Comments: Ann Gilkey explained the amendments without objection from the committee.}

Vote: The motion carried 15 - 0. REPS. AHNER, MOLNAR, SMITH, BOHARSKI and GRIMES were absent for the vote.

Motion: REP. SOFT moved the second set of amendments.
{Tape: 1; Side: A; Approx. Time Count: 16.0; Comments: EXHIBIT 2.}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 16.5-Tape 1; Side B; 21.1}

Motion/Vote: REP. MOLNAR moved to table HB 163. The motion failed 6 - 11; REPS. MCGEE, MOLNAR, BERGMAN, CURTISS, CLARK and BOHARSKI (by proxy) voting aye. REPS. SMITH, AHNER, and GRIMES were absent for the vote.
{Tape: 1; Side: B; Approx. Time Count: 21.6}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 21.8}

Motion: REP. MCGEE moved to have every reference to "putative" changed to "natural or presumed."
{Tape: 1; Side: B; Approx. Time Count: 23.5}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 23.6 - 24.1}

Vote: The motion failed by voice vote.

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 25.0}

Motion: REP. MOLNAR made a substitute motion that HB 163 DO NOT PASS.
{Tape: 1; Side: B; Approx. Time Count: 28.1}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 0.1-6.4; Comments: At beginning of discussion the tape broke, some testimony was lost.}

Vote: The motion failed 7 - 11 by roll call vote. REPS. BOHARSKI and HURDLE voted by proxy. REPS. AHNER and SMITH were absent for the vote. EXHIBIT 3

{Tape: 2; Side: A; Approx. Time Count: 6.5}

Motion: REP. KOTTEL moved a conceptual amendment to HB 163 on page 42 to clarify language between lines 6 and 15 regarding a non-state evaluator.

{Tape: 2; Side: A; Approx. Time Count: 9.0; Comments: John MacMaster clarified the language of the amendment.}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 9.8}

Motion: REP. MC GEE moved to suspend action on HB 163.

{Tape: 2; Side: A; Approx. Time Count: 10.4; Comments: CHAIRMAN CLARK ruled that that motion was not in order.}

Vote: The motion on the Kottel amendment carried by voice vote.

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 11.4; Comments: The subcommittee amendments had not been adopted. REP. MOLNAR requested that further time be given to the subcommittee to complete their charge to examine and amend the bill beyond page 30 and requested a motion to table; the chairman did not entertain the motion because the committee was discussing the amendments. REP. BOHARSKI requested that a copy of the bill be prepared reflecting the amendments. John MacMaster responded regarding the options available to answer this request.}

Vote: The motion on the subcommittee amendments carried 17 - 1; REP. McGEE voting no.

{Tape: 2; Side: A; Approx. Time Count: 17.7 - 23.5; Comments: REP. GRIMES requested that further action be suspended; REP. WYATT voiced her objection. REP. MOLNAR suggested a table motion until the subcommittee could complete their action. The chairman ruled to reconvene the subcommittee with REP. SOFT replacing REP. AHNER as chair due to her illness and reappointed REPS. GRIMES, MOLNAR, KOTTEL and SANDS as members. The subcommittee planned to reconvene Saturday following floor action.}

HEARING ON SB 283

Opening Statement by Sponsor: SEN. JIM BURNETT EXHIBITS 4-4M
{Tape: 2; Side: A; Approx. Time Count: 25.8-Tape 2; Side B; 12.5}

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3/21/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER			✓
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	8:00 ✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	7:30 ✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	7:30 ✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	8:30 ✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES

EXHIBIT 3
DATE 3/21/97
HB 163

ROLL CALL VOTE

JUDICIARY COMMITTEEDATE 3/21/97 BILL NO. HB 163 NUMBER 1MOTION: Do Not Pass - Molnar

NAME	AYE	NO
REP. BOB CLARK, CHAIRMAN	✓	
REP. DANIEL MC GEE, VICE CHAIR	✓	
REP. DIANA WYATT, VICE CHAIR		✓
REP. CHRIS AHNER (absent)		
REP. SHIELL ANDERSON		✓
REP. ELLEN BERGMAN	✓	
REP. WILLIAM BOHARSKI	✓	
REP. AUBYN CURTISS	✓	
REP. JON ELLINGSON		✓
REP. DUANE GRIMES		✓
REP. H. S. "SONNY" HANSON		✓
REP. JOAN HURDLE		✓
REP. DEB KOTTEL		✓
REP. LINDA MC CULLOUGH		✓
REP. BRAD MOLNAR	✓	
REP. GERALD PEASE		✓
REP. DIANE SANDS		✓
REP. LIZ SMITH (absent)		
REP. LOREN SOFT		✓
REP. BILL TASH	✓	

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 3/21/97

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

(House/Senate) Bill# HB 1163

Representative Wm. E. Boharski Voting (aye/no)

To Told

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: 3/2/97

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

(House/Senate) Bill# 103

Representative Wm.E. Boharski Voting (aye/no)

DO NOT PASS

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date: April 21/97

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

163 Bill# HR
(House/Senate)

Representative Jan Hurdle Voting Aye
(aye/no)

- Present during vote 5/1/97 (2 sets)
- ① No
- ② No
- ③ Do not pass that - NO.
- ④ Ratified Amendment yes
- ⑤ Do pass as an actual suspended - this is N/A
black set. yes.

Amendments to House Bill No. 163
Reading Copy

For the Committee on House Judiciary

Prepared by Ann Gilkey
January 20, 1997

1. Title, line 15.
Following: "40-8-201,"
Strike: "AND"
Following: "40-8-202,"
Insert: "52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407"
2. Page 8, line 9.
Strike: "in a court proceeding"
3. Page 8, line 22.
Strike: "adoption proceedings"
Insert: "termination of parental rights"
4. Page 8, line 23.
Strike: "an adoption"
Insert: "a"
5. Page 8, line 27.
Strike: "adoption"
Following: "involving"
Insert: "termination of parental right to"
6. Page 11, line 1.
Strike: "under 40-6-107"
7. Page 11, line 2.
Strike: "for purposes of 40-6-107"
8. Page 13, line 13.
Following: "name"
Insert: "including her maiden name, if known"
9. Page 14, line 21.
Strike: "pursuant to 40-6-116"
10. Page 15, line 7.
Following: "registration"
Insert: "unless a support order has been issued"
11. Page 18, line 9.
Following: "child"
Insert: "or for the child's support"
12. Page 18, line 12.
Strike: "do"

Insert: "does"

13. Page 23, line 6.

Strike: "must"

Insert: "may"

14. Page 23, line 20.

Following: "agency;"

Insert: "and"

15. Page 23, line 21.

Strike: "; and" and all of line 22

Insert: "."

16. Page 24, line 25.

Following: "child"

Insert: "except for the duty to pay support if paternity is
established or presumed"

17. Page 25, line 3.

Following: "child"

Insert: "except the duty to pay support"

18. Page 26, line 14.

Strike: "22"

Insert: "66"

19. Page 27, line 6.

Strike: "before"

Insert: "by"

20. Page 28, lines 17 and 19.

Strike: "putative or presumed father"

Insert: "parent"

21. Page 29, lines 3 and 25.

Following: "proof of"

Insert: "prior"

22. Page 29, line 2.

Strike: "and"

23. Page 29, line 3.

Strike: "."

Insert: "; and"

Following: line 3

Insert: "(g) proof of compliance with the Indian Child Welfare Act
and Interstate Compact on the Placement of Children, if
applicable."

24. Page 29, line 24.

Strike: "and"

25. Page 29, line 25.

Strike: "."

Insert: "; and"

Following: line 25

Insert: "(g) proof of compliance with the Indian Child Welfare Act and Interstate Compact on the Placement of Children, if applicable."

26. Page 31, line 5.

Strike: "denial"

Insert: "waiver"

27. Page 31, line 18.

Strike: "father"

Insert: "parents"

28. Page 31, line 19.

Strike: "filed notice of intent to claim paternity"

Insert: "registered with the putative father registry"

29. Page 31, line 20.

Following: "identify"

Strike: "the"

Insert: "any legal"

30. Page 31, line 22.

Following: "conception"

Insert: "and prior to birth"

31. Page 32, line 3.

Strike: "father"

Insert: "parent"

32. Page 32, line 4.

Strike: "registered with the putative father registry"

Insert: "filed notice of intent to claim paternity"

33. Page 32, line 8.

Following: "after conception"

Insert: "and prior to birth"

34. Page 32.

Following: line 13

Insert: "(3) Proof of service of any notice, acknowledgement of service, or waiver on anyone legally required to receive notice must be filed with the court."

Renumber: subsequent sections

35. Page 35, line 27.

Strike: "unable"

Insert: "able"

36. Page 38.

Following: line 4

Insert: "(5) A person accepting custody is responsible for the support of the child."

37. Page 42, lines 7 and 8.

Strike: "If" through "evaluation." on line 8.

38. Page 42, line 10.

Following: "(2)"

Insert: "In a direct parental placement adoption"

Strike: "The"

Insert: "the"

39. Page 42, line 11.

Strike: "The department shall permanently retain the copy of the evaluation"

40. Page 42, line 13.

Strike: "for 2 years"

Following: "."

Insert: "If the evaluator ceases to do business in Montana, the evaluator's records shall be forwarded to the department for retention."

41. Page 43, line 21.

Strike: "Unless a birth mother relies on the right to privacy a"

Insert: "A"

42. Page 56, line 4.

Following: "waiver"

Insert: "of notice"

43. Page 56, line 9.

Strike: "may"

Insert: "shall"

44. Page 57, line 18.

Strike: "and"

Insert: "or"

45. Page 57, line 24.

Following: ","

Insert: "and pursuant to [sections 108 and 117],"

46. Page 60, line 13.

Following: "(6)"

Insert: "for a child born in Montana,"

47. Page 62, line 19.

Strike: "."

Insert: "; or. (d) to the department's child support enforcement division providing services under 42 USC 651 et. seq."

48. Page 65, line 12.

Following: "age,"

Strike: "the clerk of the court that entered a decree of adoption"

Insert: "the department"

49. Page 70, line 27.

Following: "16"
Insert: "and 160"

50. Page 73, line 13.

Following: "(1)(g)"

Insert: "and \$5 of the filing fee shall be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations."

51. Page 81, line 7.

Following: "40-8-201,"

Strike: "and"

Following: "40-8-202,"

Insert: "52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, and 52-2-407"

52. Page 81, line 21.

Strike: "Title 41, chapter 4, and"

Strike: "parts 4 and"

Insert: "part"

53. Page 81, line 25.

Strike: "68"

Insert: "69"

EXHIBIT 2
DATE 3/24/97
HB 163

Amendments to House Bill No. 163
First Reading Copy

Requested by Representative Ahner
For the Committee Subcommittee on Adoption

Prepared by Greg Petesch
February 25, 1997

1. Page 6, line 1.
Strike: "strictly"
2. Page 6, line 5.
Following: "that the"
Insert: "interests of the child outweigh the"
3. Page 6, line 6.
Strike: "the child, and"
Strike: "outweigh the interest of"
Insert: ", and"
4. Page 6, lines 7 and 8.
Following: "mother" on line 7
Strike: remainder of line 7 through "registry" on line 8
5. Page 6, line 12.
Strike: "without notice to"
Insert: "that"
Following: the first "the father"
Strike: remainder of line 12
Insert: "is required to comply"
6. Page 6, line 13.
Strike: "manifests"
Insert: "manifest"
Strike: "prompt and full"
7. Page 6, lines 17 through 20
Following: "plan" on line 17.
Strike: remainder of line 17 through "mother" on line 20
Following: "."
Insert: "Birth mothers are encouraged to provide all known
information about the birth father of any child for whom an
adoption is planned."
8. Page 7, line 27.
Following: "]"
Insert: "and from the district court filing fee pursuant to 25-1-
201(1)(q) "
9. Page 8, line 26.
Strike: "A"
Insert: " In addition to any other notice to which the putative
father is entitled, a"

10. Page 9, line 2.

Strike: "A"

Insert: " In addition to any other notice to which the putative father is entitled, a"

Strike: "not"

11. Page 9, line 3.

Strike: "unless"

Insert: "if"

Strike: "strictly"

12. Page 9, lines 6 through 8.

Strike: "is not relieved from the obligation of registering" on line 6

Insert: "and registers"

Following: "]" on line 6

Strike: remainder of line 6 through "order" on line 7

Insert: "is entitled"

Following: "proceeding" on line 7

Strike: remainder of line 7 through "father" on line 8

13. Page 9, line 10.

Strike: "A"

Insert: " In addition to any other notice to which the putative father is entitled, a"

14. Page 9, line 11.

Strike: "adoption"

Following: "proceedings"

Insert: "to terminate parental rights"

15. Page 9, line 25.

Following: "location of"

Insert: "a possible"

16. Page 10, line 9.

Following: "entitled"

Insert: ", because of registration,"

17. Page 10, line 11.

Following: "than"

Strike: remainder of line 11 through "birth"

Insert: "5 days prior to a hearing to terminate parental rights"

18. Page 14, lines 25 through 30.

Following: "Failure" on line 25

Strike: line 25 through "fraud"

Insert: "of agency to post notice"

Following: "." on line 25

Strike: remainder of line 25 through "(3)" on line 30

19. Page 15, line 2.

Following: "father"

Insert: ", because of registration,"

20. Page 16, lines 1 and 2.

Following: "provided" on line 1

Strike: "a method for absolute"

Following: "rights" on line 1

Strike: remainder of line 1 through "registry" on line 2

21. Page 16, line 5.

Following: "establishing fraud"

Insert: "against the putative father"

22. Page 16, line 12.

Strike: "strictly"

23. Page 16, line 23.

Strike: "most stringent and complete"

24. Page 19, lines 12 and 13.

Following: "child" on line 12

Strike: remainder of line 12 through "mother" on line 13

25. Page 25, line 7.

Strike: "strictly"

26. Page 25, line 25.

Strike: "unless the birth mother relies on the right to privacy"

27. Page 31, line 1.

Following: page 30

Insert: "(c) a person adjudicated, in Montana, to be the father
of the child for the purpose of child support;

(d) a person who is recorded on the child's birth
certificate as the child's father;

(e) a person who is openly living with the child and the
child's mother at the time that the proceeding is initiated or at
the time the child was placed in the care of an authorized agency
and who is representing to the public that the person is the
child's father;"

Renumber: subsequent subsections

28. Page 31, line 19

Strike: "the mother has failed to name"

Following: "father"

Insert: "has not been named"

29. Page 32, line 4.

Strike: "the mother has failed to name"

Following: "father"

Insert: "has not been named"

30. Page 35, line 4.

Strike: "and"

Insert: "(b) a person has not been adjudicated, in Montana, to be
the father of the child for the purpose of child support;

(c) a person has not been recorded on the child's birth
certificate as the child's father;

(d) a person is not openly living with the child and the child's mother at the time that the proceeding is initiated or at the time the child was placed in the care of an authorized agency and a person is not representing to the public that the person is the child's father; and"

Renumber: subsequent subsection

31. Page 35, line 7.

Strike: "timely registered with the putative father registry"

32. Page 43, line 21.

Strike: "Unless a birth mother relies on the right to privacy, a"

Insert: "A"

33. Page 43, line 22.

Following: "child"

Insert: "and any other person required to receive notice under [section 67]"

34. Page 44, line 23.

Following: "child"

Insert: "and any other person required to receive notice under [section 67]"

35. Page 49, line 25.

Following: "child"

Insert: "and any other person required to receive notice under [section 67]"

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 25, 1997, at
7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Absent:

Rep. Chris Ahner
Rep. William Boharski until 8:00 AM
Rep. Diana Wyatt until 8:15 AM
Rep. Liz Smith until 7:30 AM

Staff Present:

John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 289, SB 329, SB 382
POSTED 3/6; 3/13 AND 3/20
Executive Action: HB 163 DO PASS AS AMENDED
SB 308 BE CONCURRED IN

EXECUTIVE ACTION ON HB 163

Motion: REP. SOFT moved to amend HB 163. EXHIBIT 1
{Tape: 1; Side: A; Approx. Time Count: 4.1; Comments: The previous action on HB 163 had been suspended. The motion to amend followed an explanation of the amendments by REP. SOFT. This set of minutes is recorded on five 60-minute tapes.}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 4.5}

Vote: The motion carried 17 - 0. REPS. ELLINGSON and WYATT voted aye by proxy. REPS. SMITH, WYATT, AHNER, ELLINGSON and BOHARSKI were absent.

Motion: REP. SOFT moved HB 163 DO PASS AS AMENDED.
{Tape: 1; Side: A; Approx. Time Count: 7.2}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 7.3-Tape 1; Side B; 8.5}

Vote: The motion carried 15 - 4; REPS. MCGEE, MOLNAR, CURTISS and CLARK voting no. REPS. WYATT, ELLINGSON, TASH and AHNER voted aye by proxy. REP. BOHARSKI was absent and left no proxy.

EXECUTIVE ACTION ON SB 308

Motion: REP. CURTISS moved SB 308 BE CONCURRED IN.
{Tape: 1; Side: B; Approx. Time Count: 9.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 9.9 - 25.5; Comments: REP. GRIMES requested that his comments regarding the intent of the committee, the intent of the legislation as well as the intended meaning of "other written authority" on page 2, line 21. REP. MCCULLOCH commented on the fiscal impact.}

Motion/Vote: REP. HURDLE moved to table SB 308. The motion failed by voice vote.
{Tape: 1; Side: B; Approx. Time Count: 27.8}

Vote: The motion to concur in SB 308 carried 13 - 7; REPS. HURDLE, MCCULLOCH, PEASE, SANDS, WYATT, ELLINGSON and KOTTEL voting no. REPS. AHNER and TASH voted aye by proxy. REPS. WYATT and ELLINGSON voted no by proxy.

HEARING ON SB 329

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 2; Side: A; Approx. Time Count: 0.1}

EXHIBIT 2

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3/25/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	8:15 ✓	✓	
REP. CHRIS AHNER	✓	✓ ✓	
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	8:45 ✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	8:15 ✓	✓	
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	7:30 ✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

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Amendments to House Bill No. 163
Third Reading Copy

Requested by the Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
March 22, 1997

1. Page 5, line 22.
Strike: "and full"
2. Page 21, line 2.
Strike: "may"
Insert: "must, on request,"
3. Page 23, line 17.
Following: "terminates"
Insert: ", as provided in [section 44],"
4. Page 26, line 30 through line 2 of page 27.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections
5. Page 27, line 6.
Following: "failure to"
Insert: "timely"
Strike: "before"
6. Page 27, line 7.
Strike: "the expected date of birth"
7. Page 27, line 8.
Following: ";"
Insert: "and"
8. Page 27, line 9.
Strike: subsection (ii) in its entirety
Renumber: subsequent subsection
9. Page 27, line 10.
Strike: "will"
Insert: "may"
10. Page 35, line 15.
Following: the first "child"
Insert: "since the child's birth or"
11. Page 35, lines 19 and 20.
Strike: "occurring" on line 19 through "birth" on line 20
12. Page 35, lines 21 and 22.
Strike: ", when" on line 21 through "child," on line 22
13. Page 61, line 4.

Strike: subsection (2) in its entirety
Renumber: subsequent subsections

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HOUSE STANDING COMMITTEE REPORT

March 25, 1997

Page 1 of 11

Mr. Speaker: We, the committee on Judiciary report that House Bill 163 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 15.
Following: "40-8-201,"
Strike: "AND"
Following: "40-8-202,"
Insert: "52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407,"
2. Page 5, line 22.
Strike: "and full"
3. Page 6, line 1.
Strike: "strictly"
4. Page 6, line 5.
Following: "that the"
Insert: "interests of the child outweigh the"
5. Page 6, line 6.
Strike: "the child, and"
Strike: "outweigh the interest of"
Insert: ", and"
6. Page 6, lines 7 and 8.
Following: "mother" on line 7
Strike: remainder of line 7 through "registry" on line 8

[Handwritten signature]
3-25-97

Committee Vote:
Yes 15, No 4.

651244SC.Hgd

[Handwritten initials]
123

7. Page 6, line 12.

Strike: "without notice to"

Insert: "that"

Following: the first "the father"

Strike: remainder of line 12

Insert: "is required to comply"

8. Page 6, line 13.

Strike: "manifests"

Insert: "manifest"

Strike: "prompt and full"

9. Page 6, lines 17 through 20

Following: "plan" on line 17.

Strike: remainder of line 17 through "mother" on line 20

Following: "."

Insert: "Birth mothers are encouraged to provide all known
information about the birth father of any child for whom an
adoption is planned."

10. Page 7, line 27.

Following: "]"

Insert: "and from the district court filing fee pursuant to 25-1-
201(1)(q)"

11. Page 8, line 9.

Strike: "in a court proceeding"

12. Page 8, line 22.

Strike: "adoption proceedings"

Insert: "termination of parental rights"

13. Page 8, line 23.

Strike: "an adoption"

Insert: "a"

14. Page 8, line 26.

Strike: "A"

Insert: "In addition to any other notice to which the putative
father is entitled, a"

15. Page 8, line 27.

Strike: "adoption"

Following: "involving"

Insert: "termination of parental rights to"

16. Page 9, line 2.

Strike: "A"

Insert: " In addition to any other notice to which the putative father is entitled, a"

Strike: "not"

17. Page 9, line 3.

Strike: "unless"

Insert: "if"

Strike: "strictly"

18. Page 9, lines 6 through 8.

Strike: "is not relieved from the obligation of registering" on line 6

Insert: "and registers"

Following: "]" on line 6

Strike: remainder of line 6 through "order" on line 7

Insert: "is entitled"

Following: "proceeding" on line 7

Strike: remainder of line 7 through "father" on line 8

19. Page 9, line 10.

Strike: "A"

Insert: "In addition to any other notice to which the putative father is entitled, a"

20. Page 9, line 11.

Strike: "adoption"

Following: "proceedings"

Insert: "to terminate parental rights"

21. Page 9, line 25.

Following: "location of"

Insert: "a possible"

22. Page 10, line 9.

Following: "entitled"

Insert: ", because of registration,"

23. Page 10, line 11.

Following: "than"

Strike: remainder of line 11 through "birth"

Insert: "5 days prior to a hearing to terminate parental rights"

24. Page 11, line 1.

Strike: "under 40-6-107"

25. Page 11, line 2.
Strike: "for purposes of 40-6-107"
26. Page 13, line 13.
Following: "name"
Insert: ", including her maiden name, if known"
27. Page 14, line 21.
Strike: "pursuant to 40-6-116"
28. Page 14, lines 25 through 30.
Following: "Failure" on line 25
Strike: line 25 through "fraud"
Insert: "of agency to post notice"
Following: "." on line 25
Strike: remainder of line 25 through "(3)" on line 30
29. Page 15, line 2.
Following: "father"
Insert: ", because of registration,"
30. Page 15, line 5.
Strike: "A"
Insert: "Unless a support order has been issued, a"
31. Page 16, lines 1 and 2.
Following: "provided" on line 1
Strike: "a method for absolute"
Following: "rights" on line 1
Strike: remainder of line 1 through "registry" on line 2
32. Page 16, line 5.
Following: "establishing fraud"
Insert: "against the putative father"
33. Page 16, line 12.
Strike: "strictly"
34. Page 16, line 23.
Strike: "most stringent and complete"
35. Page 18, line 9.
Following: "child"
Insert: "or for the child's support"
36. Page 18, line 12.
Strike: "do"
Insert: "does"

37. Page 19, lines 12 and 13.
Following: "child" on line 12
Strike: remainder of line 12 through "mother" on line 13
38. Page 21, line 2.
Strike: "may"
Insert: "must, on request,"
39. Page 23, line 6.
Strike: "must"
Insert: "may"
40. Page 23, line 17.
Following: "terminates"
Insert: ", as provided in [section 44],"
41. Page 23, line 20.
Following: "agency;"
Insert: "and"
42. Page 23, lines 21 and 22.
Strike: "; and" on line 21 through "adoption" on line 22
43. Page 24, line 25.
Following: "child"
Insert: ", except for the duty to pay support if paternity is established or presumed"
44. Page 25, line 3.
Following: "child"
Insert: "but does not absolve the person of the duty to pay support"
45. Page 25, line 7.
Strike: "strictly"
46. Page 25, line 25.
Strike: "unless the birth mother relies on the right to privacy"
47. Page 26, line 14.
Strike: "22"
Insert: "66"
48. Page 26, line 30 through line 2 of page 27.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

49. Page 27, line 6.
Following: "failure to"
Insert: "timely"
Strike: "before"
50. Page 27, line 7.
Strike: "the expected date of birth"
51. Page 27, line 8.
Following: ";"
Insert: "and"
52. Page 27, line 9.
Strike: subsection (ii) in its entirety
Re-number: subsequent subsection
53. Page 27, line 10.
Strike: "will"
Insert: "may"
54. Page 28, lines 17 and 19.
Strike: "putative or presumed father"
Insert: "parent"
55. Page 29, line 2.
Strike: "and"
56. Page 29, lines 3 and 25.
Following: "proof of"
Insert: "prior"
57. Page 29, lines 3 and 4.
Strike: "." on line 3
Insert: "; and"
Following: line 3
Insert: "(g) proof of compliance with the Indian Child Welfare Act of 1978 and Interstate Compact on the Placement of Children, if applicable."
58. Page 29, line 24.
Strike: "and"
59. Page 29, lines 25 and 26.
Strike: "." on line 25
Insert: "; and"
Following: line 25
Insert: "(g) proof of compliance with the Indian Child Welfare Act of 1978 and Interstate Compact on the Placement of

Children, if applicable."

60. Page 31, line 1.

Following: page 30

Insert: "(c) a person adjudicated, in Montana, to be the father
of the child for the purpose of child support;

(d) a person who is recorded on the child's birth
certificate as the child's father;

(e) a person who is openly living with the child and the
child's mother at the time that the proceeding is initiated or at
the time the child was placed in the care of an authorized agency
and who is representing to the public that the person is the
child's father;"

Renumber: subsequent subsections

61. Page 31, line 5.

Strike: "denial"

Insert: "waiver"

62. Page 31, line 18.

Strike: "father"

Insert: "parents"

63. Page 31, line 19

Strike: "the mother has failed to name"

Following: "father"

Insert: "has not been named"

64. Page 31, lines 19 and 20.

Strike: "filed" on line 19 through "paternity" on line 20

Insert: "registered with the putative father registry"

65. Page 31, line 20.

Following: "identify"

Strike: "the"

Insert: "any legal"

66. Page 31, line 22.

Following: "conception"

Insert: "and prior to birth"

67. Page 32, line 3.

Strike: "father"

Insert: "parent"

68. Page 32, line 4.

Strike: "the mother has failed to name"

Following: "father"

Insert: "has not been named"

69. Page 32, lines 4 and 5.

Strike: "registered" on line 4 through "registry" on line 5

Insert: "filed notice of intent to claim paternity"

70. Page 32, line 8.

Following: "after conception"

Insert: "and prior to birth"

71. Page 32, line 14.

Following: line 13

Insert: "(3) Proof of service of notice or proof of
acknowledgement of service on any person or proof of waiver
by a person legally required to be given notice must be
filed with the court."

Renumber: subsequent subsections

72. Page 35, line 4.

Strike: "and"

Insert: "(b) a person has not been adjudicated, in Montana, to be
the father of the child for the purpose of child support;

(c) a person has not been recorded on the child's birth
certificate as the child's father;

(d) a person is not openly living with the child and the
child's mother at the time that the proceeding is initiated or at
the time the child was placed in the care of an authorized agency
and a person is not representing to the public that the person is
the child's father; or"

Renumber: subsequent subsection

73. Page 35, line 7.

Strike: "timely registered with the putative father registry"

74. Page 35, line 15.

Following: the first "child"

Insert: "since the child's birth or"

75. Page 35, lines 19 and 20.

Strike: "occurring" on line 19 through "birth" on line 20

76. Page 35, lines 21 and 22.

Strike: ", when" on line 21 through "child," on line 22

77. Page 35, line 27.

Strike: "unable"

Insert: "able"

78. Page 37, line 24.
Following: "rights."
Insert: "(1)"

79. Page 37, line 26.
Strike: "(1)"
Insert: "(a)"
Renumber: subsequent subsections

80. Page 38, line 5.
Insert: "(2) A person accepting custody is responsible for the support of the child."

81. Page 42, lines 7 and 8.
Strike: "If" on line 7 through "evaluation." on line 8.

82. Page 42, line 9.
Following: "adoption"
Insert: "and, upon payment by the person evaluated of the cost of the evaluation services, to the person evaluated"

83. Page 42, lines 10 and 11.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

84. Page 42, line 13.
Strike: "for 2 years"
Following: "."
Insert: "An evaluator who ceases to do business in Montana shall give the evaluator's records to the department for retention."

85. Page 42, line 14.
Following: "evaluator"
Insert: ", except a department evaluator,"

86. Page 43, line 21.
Strike: "Unless a birth mother relies on the right to privacy, a"
Insert: "A"

87. Page 43, line 22.
Following: "child"
Insert: "and any other person required to receive notice under [section 67]"

88. Page 44, line 23.
Following: "child"
Insert: "and any other person required to receive notice under

[section 67]"

89. Page 49, line 25.

Following: "child"

Insert: "and any other person required to receive notice under
[section 67]"

90. Page 56, line 4.

Following: "waiver"

Insert: "of notice"

91. Page 56, line 9.

Strike: "may"

Insert: "must"

92. Page 57, line 18.

Strike: "and"

Insert: "or"

93. Page 57, line 24.

Following: ", "

Insert: "then pursuant to [sections 108 and 117], "

94. Page 60, line 13.

Following: "(6)"

Insert: "for a child born in Montana,"

95. Page 61, line 4.

Strike: subsection (2) in its entirety

Re-number: subsequent subsections

96. Page 62, line 19.

Strike: "."

Insert: "; or"

97. Page 62, line 20.

Following: line 19

Insert: "(d) the department's child support enforcement division
providing services under 42 U.S.C. 651, et seq."

98. Page 65, lines 12 and 13.

Strike: "the clerk" on line 12 through "adoption" on line 13

Insert: "the department"

99. Page 73, line 13.

Following: "(1)(q)"

Insert: ", and \$5 of the filing fee must be deposited in the
district court fund. If no district court fund exists, fees

must be deposited in the general fund for district court operations"

100. Page 81, line 7.

Following: "40-8-201,"

Strike: "and"

Following: "40-8-202,"

Insert: "52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, and 52-2-407,"

101. Page 81, line 21.

Strike: "Title 41, chapter 4, and"

Strike: "parts 4 and"

Insert: "part"

102. Page 81, line 25.

Strike: "68"

Insert: "69"

-END-

SENATE JUDICIARY

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0135	1/24	2/05	CONCUR AS AMENDED	VOTE: 10-0	2-6	2/08		
HB0137	SMITH, LIZ	1/30	3/07	NO INQUEST FOR PRISONER DEAD FROM DEATH SENTENCE OR TERMINAL CONDITION	CONCUR AS AMENDED	VOTE:10-0	3-7	3/12
HB0141	KEENAN, BOB	1/20	1/31	REVISE ADMINISTRATIVE PROVISIONS CONCERNING SUPREME COURT	CONCUR	VOTE:10-0	1-31	1/31
HB0159	BARNHART, BEVERLY	3/03	3/19	ALLOW DPHHS TO INITIATE CHILD CARE REMEDY IN JUSTICE, CITY, MUNI. OR DIST. COURT	CONCUR	VOTE:10-0	3-19	3/21
HB0163	JOHNSON, JOHN	3/28	4/07	REVISE ADOPTION LAWS	CONCUR AS AMENDED	VOTE: 10-0	4-8	4/09
HB0168	JOHNSON, ROYAL	1/30	3/07	GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS	CONCUR	VOTE:10-0	3-7	3/08
HB0195	TASH, BILL	2/19	3/04	REQUIRE STATE AGENCY PAY FEE TO FILE CERTAIN WARRANTS, LIENS, AND ABSTRACTS	CONCUR	VOTE:10-0	3-5	3/06
HB0200	AHNER, CHRIS	2/03	2/10	SURREPTITIOUS TAKING OF VISUAL IMAGE IN CERTAIN ROOMS IN PLACE OF BUSINESS	CONCUR	VOTE:10-0	2-12	2/14
HB0203	JOHNSON, ROYAL	3/03	3/19	REVISE CHILD ABUSE & NEGLECT LAWS	CONCUR AS AMENDED	VOTE:10-0	3-25	3/26
HB0215	ORR, SCOTT	2/05	2/20	EXPAND DEFINITION OF POLICE DOG TO INCLUDE SEARCH AND RESCUE	CONCUR	VOTE:10-0	2-20	2/20
HB0218	CLARK, ROBERT	1/23	1/31	REVISE REFERENCE TO FED. GUN-FREE SCHOOL ZONE ACT IN INDIVID. LICENSURE LAW	CONCUR	VOTE:10-0	1-31	1/31
HB0222	ANDERSON, SHIELL	2/19	3/05	DEATH PENALTY SENTENCING AND POSTCONVICTION PROCEEDINGS REVISIONS	CONCUR AS AMENDED	VOTE:9-1	3-7	3/12
	BARNHART, BEVERLY			REVISE CHILD CUSTODY & VISITATION; PARENTING PLAN REQUIRED				

HOUSE BILL NO. 163

INTRODUCED BY J. JOHNSON, MENAHAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, ~~AND 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407~~, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

HOUSE BILL NO. 163

INTRODUCED BY J. JOHNSON, MENAHAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, ~~AND 40-8-202~~, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of public health and human services authority to adopt administrative rules. The rules must provide procedures for the putative father registry, including methods of notification, filing, and accessing information. The department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary focus of the rules.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana Adoption Act".

1 **NEW SECTION. Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure
2 that the best interests of the child are met by adoption proceedings.

3 (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing
4 family that can give the child the care, protection, and opportunities essential for healthy personal growth
5 and development.

6 (3) The well-being of the adopted child is the main objective in the placement of a child for
7 adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition
8 of the interdependent needs and interests of birth parents and adoptive parents.

9 (4) It is the policy of the state of Montana to support relationships between adoptees and their birth
10 families when desired by the affected parties.

11
12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 156], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings
15 that are intended to result in the adoptee becoming the legal child of another person.

16 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
17 does not exist genetically.

18 (3) "Adoptive parent" means an adult who has become the mother or father of a child through the
19 legal process of adoption.

20 (4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United
21 States and that is expressly empowered to place children preliminary to a possible adoption.

22 (5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of
23 the child.

24 (6) "Child" means any person under 18 years of age.

25 (7) "Confidential intermediary" means a person certified by the department and under contract with
26 or employed by a nonprofit entity with expertise in adoption.

27 (8) "Court" means a court of record in a competent jurisdiction and in Montana means a district
28 court or a tribal court.

29 (9) "Department" means the department of public health and human services, provided for in
30 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual.

NEW SECTION. **Section 4. Venue.** (1) Proceedings for adoption must be brought in the district

1 court of the county where the petitioners reside.

2 (2) Petitions for appointment of a confidential intermediary may be filed:

3 (a) in the county where the decree of adoption was issued;

4 (b) in the county of residence of the petitioner; or

5 (c) if the petitioner resides out of state, in any county.

6

7 **NEW SECTION. Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

8 (a) the child does not have a living parent;

9 (b) the parental rights of the living parents of the child have been terminated according to the laws
10 of this state or of another jurisdiction; or

11 (c) the living parents, guardian authorized by the court, or department or agency with custody of
12 the child consent to the adoption.

13 (2) An adult may be adopted as provided in [sections 121 through 125].

14 (3) A stepchild may be adopted as provided in [sections 112 through 120].

15

16 **NEW SECTION. Section 6. Who may adopt.** The following individuals who otherwise meet the
17 requirements of [sections 1 through 156] are eligible to adopt a child:

18 (1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the
19 child;

20 (2) an unmarried individual who is at least 18 years of age; or

21 (3) a married individual at least 18 years of age who is legally separated from the other spouse or
22 whose spouse has judicially been declared incompetent.

23

24 **NEW SECTION. Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree
25 may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

26 (2) A child may be placed for adoption only by:

27 (a) the department or another agency to which the child has been relinquished for purposes of
28 adoption;

29 (b) the department or another agency expressly authorized to place the child for adoption by a
30 court order terminating the relationship between the child and the child's parent or guardian;

1 (c) the child's parents; or

2 (d) a guardian expressly authorized by the court to place the child for adoption.

3
4 **NEW SECTION. Section 8. Rights and responsibilities of parties in adoption proceedings.** (1) The
5 legislature finds that the rights and interests of all parties affected by an adoption proceeding must be
6 considered and balanced in determining the necessary constitutional protection and appropriate processes.

7 (2) The legislature finds that:

8 (a) every child deserves to be raised by a family in which support and care are promptly provided
9 by one or more parents in a nurturing environment on a regular and ongoing basis;

10 (b) the state has a compelling interest in providing stable and permanent homes for adoptive
11 children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents
12 accountable for meeting the needs of children;

13 (c) an unmarried mother, faced with the responsibility of making crucial decisions about the future
14 of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding
15 the mother's future and the future of the child, and is entitled to assurance regarding the permanence of
16 an adoptive placement;

17 (d) adoptive children have a right to permanence and stability in adoptive placements;

18 (e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining
19 custody of an adopted child; and

20 (f) a birth father who is not married to the child's mother has the primary responsibility to protect
21 the father's rights. The father's inchoate interest in the child requires constitutional protection only when
22 the father has demonstrated a timely and full commitment to the responsibilities of parenthood, both during
23 pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to
24 demonstrate that commitment by:

25 (i) timely and consistently providing financial support;

26 (ii) complying with the requirements of the putative father registry; and

27 (iii) demonstrating the establishment of a substantial relationship with the child as described in
28 [section 73].

29 (3) If a birth father who is not married to the child's mother fails to grasp the opportunities that
30 are available to the father to establish a relationship with the child, the father's parental rights will be lost

1 entirely by the failure to timely exercise it or by the failure to ~~strictly~~ comply with the available legal steps
2 to substantiate the parental interest.

3
4 **NEW SECTION. Section 9. Need for finality -- balancing of interests.** Finality is necessary in order
5 to facilitate the state's compelling interest. The legislature finds that the INTERESTS OF THE CHILD
6 OUTWEIGH THE interests of the state, the mother, ~~the child, and~~ the adoptive parents ~~outweigh the interest~~
7 ~~of, AND~~ a birth father who is not married to the child's mother ~~and who does not timely grasp the~~
8 ~~opportunities available to establish and demonstrate a relationship with the father's child in accordance with~~
9 ~~the requirements of the putative father registry.~~

10
11 **NEW SECTION. Section 10. Presumed knowledge that child may be adopted without notice.** A
12 birth father who is not married to the mother of the child is presumed to know that the child may be
13 adopted without the father's consent and ~~without notice to~~ THAT the father ~~unless the father strictly~~
14 ~~complies~~ IS REQUIRED TO COMPLY with the provisions of [sections 1 through 156] and ~~manifests~~
15 MANIFEST a ~~prompt and full~~ commitment to the father's parental responsibilities.

16
17 **NEW SECTION. Section 11. Unmarried birth mother's right of privacy.** An unmarried birth mother
18 has a right of privacy with regard to the mother's pregnancy and adoption plan ~~and therefore has no legal~~
19 ~~obligation to disclose the identity of the birth father of the child prior to or during an adoption proceeding.~~
20 ~~The mother does not have an obligation to volunteer information to the court with respect to a potential~~
21 ~~birth father who is not married to the mother.~~ BIRTH MOTHERS ARE ENCOURAGED TO PROVIDE ALL
22 KNOWN INFORMATION ABOUT THE BIRTH FATHER OF ANY CHILD FOR WHOM AN ADOPTION IS
23 PLANNED.

24
25 **NEW SECTION. Section 12. Recognition of adoption in another jurisdiction.** (1) A decree or order
26 of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree
27 or order is:

- 28 (a) issued by a court of any other state that is entitled to full faith and credit in this state; or
29 (b) entered by a court or administrative entity in another country acting pursuant to:
30 (i) that country's law; or

(ii) to any convention or treaty on intercountry adoption that the United States has ratified.

(2) The rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree or order were issued by a court of this state.

NEW SECTION. Section 13. Proceedings subject to Indian Child Welfare Act. A proceeding under [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., is subject to that act.

NEW SECTION. Section 14. Interstate placement. The Interstate Compact on the Placement of Children, Title 41, chapter 4, governs:

(1) an adoption in this state of a child brought into this state from another state by a prospective adoptive parent;

(2) a person residing in or an agency doing business from another state who places the child for adoption in this state; and

(3) the placement of a Montana child in another state.

NEW SECTION. Section 15. International placement. An adoption in this state of a child brought into this state from another country by a prospective adoptive parent or by a person who places the child for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty governing adoption that the United States has ratified and to any relevant federal law.

NEW SECTION. Section 16. Fees for services -- special revenue account -- statutory appropriation.

(1) The department shall establish fees that it may charge and that are reasonably related to the cost incurred by the department in completing or contracting for adoption services.

(2) The department may contract with licensed social workers or licensed child-placing agencies for the purposes of completing the preplacement or postplacement evaluation or for providing postplacement supervision.

(3) An agency contracting to perform the services may set and charge a reasonable fee commensurate with the services provided.

(4) There is an adoption services account in the state special revenue fund. The fees collected by

the department under [sections 1 through 156] AND FROM THE DISTRICT COURT FILING FEE PURSUANT TO 25-1-201(1)(Q) must be deposited into this account and may be used by the department for adoption services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.

NEW SECTION. Section 17. Rulemaking authority. The department may adopt rules to implement the administration and purposes of [sections 1 through 156].

NEW SECTION. Section 18. Definitions. As used in [sections 18 through 38], unless the context requires otherwise, the following definitions apply:

(1) "Child" includes an unborn child.

(2) (a) "Putative father" means an individual who may be a child's birth father but who:

(i) is not married to the child's mother on or before the date that the child is born; or

(ii) has not established paternity of the child ~~in a court proceeding~~ prior to the filing of a petition for termination of parental rights to the child for purposes of adoption.

(b) The term includes an individual who is:

(i) less than 18 years of age; and

(ii) not married to the child's mother even though the individual is a presumed father within the meaning of 40-6-105.

(3) "Registry" means the putative father registry established under [section 19].

NEW SECTION. Section 19. Putative father registry. The putative father registry is established within the vital statistics bureau of the department. The department shall adopt rules to administer the registry.

NEW SECTION. Section 20. Purpose of registry. (1) The purpose of the putative father registry is to provide notice of ~~adoption proceedings~~ TERMINATION OF PARENTAL RIGHTS to a putative father who asserts a parental interest in a child so that the putative father may appear in ~~an adoption~~ A proceeding and have an opportunity to establish that the putative father's inchoate rights in the child have vested because a substantial relationship with the child has been established as provided in [section 73].

(2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,

1 A putative father of a child who complies with the requirements of the putative father registry is entitled
2 to notice of any ~~adoption~~ proceedings involving TERMINATION OF PARENTAL RIGHTS TO the child.

3
4 NEW SECTION. Section 21. Presumed knowledge of pregnancy -- duty to register to be afforded
5 notice -- putative and presumed fathers. (1) A person who engages in sexual relations with a member of
6 the opposite sex is presumed to know that a pregnancy could result.

7 (2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,
8 A putative father is ~~not~~ entitled to notice of termination of parental rights proceedings for the purposes of
9 adoption ~~unless~~ IF the putative father has ~~strictly~~ complied with the requirements of the putative father
10 registry.

11 (3) An individual who is not married to the mother but who is presumed to be a father under
12 40-6-105 ~~is not relieved from the obligation of registering~~ AND REGISTERS in accordance with [sections
13 18 through 38] ~~in order~~ IS ENTITLED to receive notice of a termination of parental rights proceeding ~~for a~~
14 ~~child for whom the individual may be the presumed father.~~

15
16 NEW SECTION. Section 22. Registration. (1) A IN ADDITION TO ANY OTHER NOTICE TO
17 WHICH THE PUTATIVE FATHER IS ENTITLED, A putative father is entitled to notice of any ~~adoption~~
18 proceedings TO TERMINATE PARENTAL RIGHTS involving a child whom the putative father might have
19 fathered if the putative father timely files the following information with the department:

20 (a) the putative father's:

21 (i) full name;

22 (ii) address at which the putative father may be served by certified mail, return receipt requested,

23 with notice of a proceeding to terminate parental rights;

24 (iii) social security number;

25 (iv) date of birth; and

26 (v) tribal affiliation if applicable;

27 (b) the mother's:

28 (i) name, including all other names known to the putative father that the mother uses; and

29 (ii) address, social security number, and date of birth, if known;

30 (c) the child's:

- 1 (i) name and place of birth, if known; or
2 (ii) the approximate date and location of A POSSIBLE conception and the approximate expected
3 date of delivery.

4 (2) If a putative father does not have an address where the putative father can receive notice of
5 a termination of parental rights proceeding, the putative father may designate another person as an agent
6 for the purpose of receiving notice. The putative father shall provide the department with the agent's name
7 and the address at which the agent may be served. Service of notice by certified mail, return receipt
8 requested, constitutes service of notice upon the putative father.

9 (3) A putative father shall register under this section on a registration form prescribed by the
10 department or with a legibly typed or handwritten statement that provides the required information and that
11 is submitted to the department pursuant to [section 24]. The registration must be signed by the putative
12 father and notarized.

13 (4) A putative father who registers under this section is responsible for providing written updates
14 regarding any change of the putative father's name or address.

15

16 **NEW SECTION. Section 23. When putative father to register -- actual knowledge of pregnancy**
17 **not required.** (1) In order to be entitled, BECAUSE OF REGISTRATION, to receive notice of a termination
18 of parental rights proceeding, a putative father's registration form complying with the requirements of
19 [section 22] must be received by the department not later than ~~close of business on the date of the child's~~
20 ~~birth~~ **5 DAYS PRIOR TO A HEARING TO TERMINATE PARENTAL RIGHTS.**

21 (2) A putative father may file all information required by [section 22] before a child's birth even
22 though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has
23 continued through gestation.

24

25 **NEW SECTION. Section 24. How registration submitted.** A putative father shall submit a
26 registration form:

- 27 (1) in person; or
28 (2) by facsimile transmission, mail, private courier, or express delivery service.

29

30 **NEW SECTION. Section 25. Burden of putative father to preserve rights upon receipt of notice.**

When a putative father receives notice that a child in whom the putative father claims a parental interest is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out in [section 73] for determining whether the putative father has made reasonable efforts to establish a substantial relationship with the child who is the subject of the proceedings have been met.

NEW SECTION. Section 26. Presumption created -- admissibility in other proceedings. A person filing a registration form is presumed to be the father of the child for purposes of adoption unless the mother denies that the registrant is the father. The registration or any revocation that is filed is admissible in a paternity proceeding ~~under 40-6-107~~ and creates a rebuttable presumption as to the paternity of the child ~~for purposes of 40-6-107~~. The registration creates a rebuttable presumption as to paternity of the child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support enforcement action under Title 40, chapter 5.

NEW SECTION. Section 27. Duties of department. (1) The department shall:

(a) prescribe a registration form for the information that a putative father submits under [section 22]; and

(b) make the registration forms available through:

(i) the department;

(ii) each clerk of a district court;

(iii) each local health department; and

(iv) each county clerk and recorder.

(2) A notice provided by the department that informs the public about the purpose and operation of the registry must be posted in a conspicuous place by each:

(a) clerk of a district court;

(b) driver's examination station of the motor vehicle division of the department of justice;

(c) local health department; and

(d) county clerk and recorder.

(3) The title and registration bureau of the motor vehicle division of the department of justice and the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the

1 registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The
2 department shall provide the copies of the notices to the title and registration bureau and the county
3 treasurers.

4 (4) The notice under subsection (2) must include information regarding:

5 (a) where to obtain a registration form;

6 (b) where to register;

7 (c) the circumstances under which a putative father is required to register;

8 (d) the period under [section 23] during which a putative father is required to register in order to
9 entitle the putative father to receive notice of a proceeding to terminate parental rights;

10 (e) the information that must be provided for the registry and what other actions the putative father
11 is required to take to preserve a right to notice;

12 (f) the consequences of not submitting a timely registration; and

13 (g) the penalties for filing a false claim with the putative father registry.
14

15 **NEW SECTION. Section 28. Duties of department.** (1) The department shall:

16 (a) prescribe a registration form for the information that a putative father submits under [section
17 22]; and

18 (b) make the registration forms available through:

19 (i) the department;

20 (ii) each clerk of a district court; and

21 (iii) each local health department.

22 (2) A notice provided by the department that informs the public about the purpose and operation
23 of the registry must be posted in a conspicuous place by each:

24 (a) clerk of a district court;

25 (b) driver's examination station of the motor vehicle division of the department of justice;

26 (c) local health department; and

27 (d) county clerk and recorder.

28 (3) The notice under subsection (2) must include information regarding:

29 (a) where to obtain a registration form;

30 (b) where to register;

1 (c) the circumstances under which a putative father is required to register;

2 (d) the period under [section 23] during which a putative father is required to register in order to
3 entitle the putative father to receive notice of an adoption;

4 (e) the information that must be provided for the registry and what other actions the putative father
5 is required to take to preserve a right to notice;

6 (f) the consequences of not submitting a timely registration; and

7 (g) the penalties for filing a false claim with the putative father registry.

8
9 **NEW SECTION. Section 29. Information maintained in registry.** The department shall maintain the
10 following information in the registry:

11 (1) the registration information provided by the putative father under [section 22];

12 (2) the date that the department receives a putative father's registration;

13 (3) the name and affiliation of any person who requests that the department search the registry
14 to determine whether a putative father is registered in relation to a mother whose child is or may be the
15 subject of a termination proceeding and the date the request is submitted; and

16 (4) any other information that the department determines is necessary to access the information
17 in the registry.

18
19 **NEW SECTION. Section 30. Storage of data.** The department shall store the registry's data in a
20 manner so that the data is accessible through:

21 (1) the putative father's name;

22 (2) the mother's name, INCLUDING HER MAIDEN NAME, IF KNOWN;

23 (3) the date of birth of the putative father, the mother, and the child, if known;

24 (4) the child's name, if known; and

25 (5) the social security number for the putative father, the mother, and the child, if known.

26
27 **NEW SECTION. Section 31. Registry search -- request -- affidavit.** (1) The following persons may
28 at any time request that the department search the registry to determine whether a putative father is
29 registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

30 (a) a representative of the department;

- 1 (b) a representative of an agency when the agency is or may be arranging an adoption;
- 2 (c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
- 3 direct parental placement adoption who has the notarized consent of the birth mother; or
- 4 (d) any woman who is the subject of a registration.

5 (2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner

6 shall:

7 (a) request that the department search the registry at least 1 day after the expiration of the period

8 specified under [section 23]; and

9 (b) file an affidavit prepared by the department in response to a request under subsection (2)(a)

10 with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit

11 must meet the requirements of subsections (4) and (5).

12 (3) A request for information about a registration from the department must be in writing.

13 (4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall

14 submit an affidavit to the requestor verifying whether a putative father has registered within the period

15 allowed under [section 23] in relation to a mother whose child or expected child is the subject of the

16 termination proceeding.

17 (5) Whenever the department finds that one or more putative fathers are registered, the department

18 shall:

19 (a) submit a copy of each registration form with the department's affidavit; and

20 (b) include in the affidavit the date that the department representative, agency, or attorney

21 submitted the request for the search.

22 (6) A court may not issue an order terminating parental rights unless the department's affidavit

23 under subsection (5) is filed with the court.

24

25 **NEW SECTION. Section 32. Duties of department upon receipt of request.** (1) Whenever the

26 department receives a request, the department shall:

27 (a) search its records of putative father registrations and search its records for any

28 acknowledgement of paternity filed pursuant to 40-6-105; and

29 (b) notify the requestor as to whether a paternity action has been filed and a paternity order issued

30 to the department pursuant to ~~40-6-116~~ requiring the issuance of a new birth certificate concerning a child

1 who is or may be the subject of an adoption that the attorney or agency is arranging.

2 (2) The department may charge a reasonable fee for responding to a request under this section.

3
4 **NEW SECTION. Section 33. Failure to register -- irrevocable implied consent -- fraud OF AGENCY**
5 **TO POST NOTICE.** ~~(1) A putative father who fails to register within the period specified under [section~~
6 ~~23] waives notice of a termination proceeding.~~

7 ~~(2) The putative father's waiver under subsection (1) constitutes an irrevocable implied consent~~
8 ~~to the child's adoption.~~

9 ~~(3) Failure of an agency to post a proper notice under [section 27] does not relieve a putative father~~
10 ~~of the obligation to register with the department in accordance with the putative father registry in order to~~
11 ~~entitle the putative father, BECAUSE OF REGISTRATION, to notice of proceedings involving a child who~~
12 ~~may have been fathered by the putative father.~~

13
14 **NEW SECTION. Section 34. Revocation of registration.** **A UNLESS A SUPPORT ORDER HAS BEEN**
15 **ISSUED, A** putative father may revoke a registration at any time by submitting to the department a signed,
16 notarized statement revoking the registration.

17
18 **NEW SECTION. Section 35. Certified copy of registration form to be furnished upon request.** The
19 department shall furnish a certified copy of the putative father's registration form upon written request by:

- 20 (1) a putative father whose name appears on the registration form being requested;
21 (2) a mother whose name appears on the registration form being requested;
22 (3) upon reaching majority, a person who was the subject of a registration;
23 (4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
24 direct parental placement adoption who has the notarized consent of the birth mother;
25 (5) a licensed child-placing agency;
26 (6) a court that presides over a pending adoption;
27 (7) the child support enforcement division of the department; or
28 (8) a representative of the department involved in an adoption or a neglect and dependency
29 proceeding under Title 41, chapter 3.
30

1 NEW SECTION. **Section 36. Information confidential.** Except as otherwise provided in [sections
2 18 through 38], information contained within the registry is confidential.

3
4 NEW SECTION. **Section 37. Registration of false information -- criminal and civil penalties.** A
5 person who purposely or knowingly registers false information or requests confidential information in
6 violation of a putative father registry commits a misdemeanor and may be civilly liable for damages.

7
8 NEW SECTION. **Section 38. Responsibility of each party to protect interests -- putative fathers --**
9 **fraud no defense.** (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation
10 in adoption proceedings and has provided a method for absolute protection of a putative father's rights by
11 ~~compliance with the provisions of the putative father registry.~~ In balancing the rights and interests of the
12 state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative
13 father, the legislature determines that the putative father is in the best position to prevent or ameliorate the
14 effects of fraud and that, therefore, the burden of establishing fraud AGAINST THE PUTATIVE FATHER by
15 clear and convincing evidence must be born by the putative father.

16 (2) Each parent of a child conceived or born outside of marriage to the other parent is responsible
17 for that parent's own actions and assertion of their parental rights notwithstanding any action, statement,
18 or omission of the other parent or third parties.

19 (3) A person injured by fraudulent representations or actions in connection with an adoption is
20 entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to
21 ~~strictly~~ comply with the requirements of the putative father registry and is not a basis for dismissal of a
22 petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

23 (4) A putative father who resides in another state may contest an adoption prior to issuance of a
24 decree of adoption and may assert the putative father's interest in the child. If the adoption is contested,
25 the court shall hold an evidentiary hearing to determine if:

26 (a) the putative father resides and has resided in another state where the unmarried mother lived
27 or resided either at the time of conception or through a portion of the pregnancy;

28 (b) the mother left that state, concealing the location from the putative father regarding where the
29 mother could be contacted or located;

30 (c) the father has, through every reasonable means, attempted to locate the mother but has been

1 unable to do so; and

2 (d) the putative father has complied with the ~~most stringent and complete~~ requirements of the state
3 where the mother previously resided or was located in order to protect and preserve the putative father's
4 parental interest and rights concerning the child in cases of adoption.

5
6 **NEW SECTION. Section 39. Consent required.** An adoption of a child may be decreed when
7 written consents to adoption have been executed by:

8 (1) the birth mother;

9 (2) the husband of the birth mother if the husband is the presumed father of the child under
10 40-6-105;

11 (3) any other person whose parental rights have been established by a court;

12 (4) the department or an agency that has custody of the child and the authority to place the child
13 for adoption;

14 (5) the legal guardian of the child if both parents are dead or their rights have been judicially
15 terminated and the guardian has authority by order of the court appointing the guardian to consent to the
16 adoption;

17 (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child
18 does not have the mental capacity to consent.

19
20 **NEW SECTION. Section 40. Persons whose consent not required.** Consent to adoption of a child
21 is not required from:

22 (1) an individual whose parental relationship to the child has been judicially terminated for unfitness
23 or has been determined not to exist or who has waived parental rights;

24 (2) a parent who has been judicially declared incompetent;

25 (3) an individual who has not been married to the mother of the child and who, after the
26 conception of the child, executes a notarized statement denying paternity or a notarized statement
27 acknowledging paternity and denying any interest in the child; or

28 (4) the personal representative of a deceased parent's estate.

29
30 **NEW SECTION. Section 41. Form of consent.** The consents required by [section 39] must be

1 acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of
2 the department, an agency, or the court.

3
4 **NEW SECTION. Section 42. Child available for adoption -- voluntary acts of parents.** A parent may
5 voluntarily make a child available for adoption by:

- 6 (1) executing a voluntary relinquishment and consent to adoption;
7 (2) executing a denial of paternity; or
8 (3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of
9 the child.

10
11 **NEW SECTION. Section 43. Voluntary relinquishment -- validity.** (1) A voluntary relinquishment
12 is not valid unless the parent specifically relinquishes custody of the child to the department, a licensed
13 child-placing agency, or a specifically identified prospective adoptive parent and:

- 14 (a) the department or agency to whom the child is being relinquished has agreed in writing to
15 accept custody of the child until the child is adopted; or
16 (b) the identified prospective adoptive parent has agreed in writing to accept temporary custody
17 and to provide support and care to the child until that person's adoption petition is granted or denied.

18 (2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve
19 the parent executing the relinquishment of any duty owed to the child **OR FOR THE CHILD'S SUPPORT.**

20
21 **NEW SECTION. Section 44. Arrearages of child support -- responsibility to child.** (1) A voluntary
22 relinquishment of a parent's rights and responsibilities toward a child ~~do~~ **DOES** not cancel any responsibility
23 to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to
24 waive the payment of the arrearages.

25 (2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child
26 remains financially responsible for the child until a court actually terminates parental rights to the child.

27
28 **NEW SECTION. Section 45. Who may relinquish -- to whom.** (1) A parent or guardian whose
29 consent to the adoption of a child is required may relinquish to the department or an agency all rights with
30 respect to the child, including legal and physical custody and the right to consent to the child's adoption.

(2) A parent or guardian whose consent to the adoption of a child is required and who has filed a notice of parental placement under [section 95] for a direct parental placement adoption may:

(a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal and physical custody; and

(b) consent to the child's adoption by the prospective adoptive parents.

NEW SECTION. Section 46. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the limitations in [section 148].

NEW SECTION. Section 47. Time and prerequisites for execution of relinquishment and consent to adoption -- copy of preplacement evaluation -- notarization. (1) A parent whose consent to the adoption of a child is required may execute a relinquishment and consent to adoption only after the following criteria have been met:

(a) the child has been born;

(b) not less than 72 hours have elapsed since the birth of the child ~~if the person relinquishing parental rights is the child's birth mother;~~

(c) the parent has received counseling in accordance with [section 48]; and

(d) in a direct parental placement adoption:

(i) the parent has been informed that fees for any required counseling and legal fees are allowable expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations set in [section 148];

(ii) if the parent is a minor, the parent has been represented by separate legal counsel; and

(iii) prior to the execution of the relinquishment, the parent has been provided a copy of the

1 preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

2 (2) A guardian may execute a relinquishment and consent to adopt at any time after being
3 authorized by a court.

4 (3) The department or a licensed child-placing agency may execute a consent for the adoption at
5 any time before or during the hearing on the petition for adoption.

6 (4) A child whose consent is required may execute a consent at any time before or during the
7 hearing on the petition to adopt.

8 (5) Except as provided in this section, a relinquishment and consent to adopt must be a separate
9 instrument executed before a notary public.

10 (6) If the person from whom a relinquishment and consent to adopt is required is a member of the
11 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
12 authorized by law to administer oaths.

13
14 **NEW SECTION. Section 48. Counseling requirements.** (1) Counseling of the birth mother is
15 required in department, agency, and direct parental placement adoptions. If any other parent is involved
16 in an adoptive placement, counseling of that parent is encouraged.

17 (2) Counseling must be performed by a person employed by the department or by a staff person
18 of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling
19 requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed
20 prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and
21 consent to adopt executed prior to completion of required counseling is void.

22 (3) During counseling, the counselor shall offer an explanation of:

23 (a) adoption procedures and options that are available to a parent through the department or
24 licensed child-placing agencies;

25 (b) adoption procedures and options that are available to a parent through direct parental placement
26 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be
27 paid by a prospective adoptive parent as provided in [sections 147 and 148];

28 (c) the alternative of parenting rather than relinquishing the child for adoption;

29 (d) the resources that are available to provide assistance or support for the parent and the child
30 if the parent chooses not to relinquish the child;

1 (e) the legal and personal effect and impact of terminating parental rights and of adoption;

2 (f) the options for contact and communication between the birth family and the adoptive family;

3 (g) postadoptive issues, including grief and loss;

4 (h) the reasons for and importance of providing accurate medical and social history information
5 under [section 81];

6 (i) the operation of the confidential intermediary program; and

7 (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon
8 request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the
9 vital statistics bureau withhold release of the original birth certificate.

10 (4) The counselor shall prepare a written report containing a description of the topics covered and
11 the number of hours of counseling. The report must specifically include the counselor's opinion of whether
12 or not the parent understood all of the issues and was capable of informed consent. The report ~~may~~ MUST,
13 ON REQUEST, be released to the person counseled, to the department, to an agency, or with the consent
14 of the person counseled, to an attorney for the prospective adoptive parents.

15
16 **NEW SECTION. Section 49. Revocation of relinquishment and consent.** (1) The parent who
17 executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive
18 parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation
19 prior to the issuance of an order terminating parental rights.

20 (2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

21
22 **NEW SECTION. Section 50. Conditional relinquishment and consent.** (1) A relinquishment and
23 consent to adopt may provide that it not take effect only if:

24 (a) the other parent does not execute a relinquishment and consent to adopt within a specified
25 period; or

26 (b) a court decides to not terminate another individual's parental relationship to the child.

27 (2) A relinquishment and consent to adopt may not be conditioned on whether or not existing
28 agreements for matters, including but not limited to visitation and ongoing communication with the child,
29 are later performed.

1 **NEW SECTION.** **Section 51. Content of relinquishment and consent to adopt.** (1) A
2 relinquishment and consent to adopt must be in writing and must contain:

3 (a) the date, place, and time of the execution of relinquishment and consent to adopt;

4 (b) the name, date of birth, and current mailing address of the individual executing the
5 relinquishment and consent to adopt;

6 (c) the date of birth and the name of the child to be adopted; and

7 (d) the name, address, and telephone numbers of the department or agency to which the child is
8 being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the
9 lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment
10 and consent has placed or intends to place the child for adoption.

11 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
12 parent or guardian executing the document is voluntarily and unequivocally consenting to the:

13 (a) permanent transfer of legal and physical custody of the child to the department or agency for
14 the purposes of adoption; or

15 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific
16 identified adoptive parent whom the parent or guardian has selected.

17 (3) A relinquishment and consent to adopt must state:

18 (a) that after the document is signed or confirmed in substantial compliance with this section, it
19 is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any
20 reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and
21 consent to adopt to visit or communicate with the child;

22 (b) that the adoption will extinguish all parental rights and obligations that the individual executing
23 the relinquishment and consent to adopt has with respect to the child, except for arrearages of child
24 support unless the arrearages are waived by the person to whom they are owed, and that the
25 relinquishment will remain valid whether or not any agreement for visitation or communication with the child
26 is later performed;

27 (c) that the individual executing the relinquishment and consent to adoption has:

28 (i) received a copy of the relinquishment and consent to adoption;

29 (ii) received a copy of a written agreement by the department, agency, or prospective adoptive
30 parent to accept temporary custody and to provide support and care to the child until an adoption petition

1 is granted or denied;

2 (iii) if required, received counseling services and information about adoption pursuant to [section
3 48] explaining the meaning and consequences of an adoption;

4 (d) in direct parental placement adoptions, that the individual has:

5 (i) been advised if the individual is:

6 (A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which
7 the child is being relinquished; or

8 (B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency
9 and whose fees are allowable expenses that can be paid by the prospective adoptive parents;

10 (ii) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

11 (e) in agency and direct parental placement adoptions, that the individual has:

12 (i) been advised of the obligation to provide the medical and social history information required
13 under [section 81] pertaining to disclosures; and

14 (ii) not received or been promised any money or anything of value for execution of the
15 relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

16 (4) A relinquishment and consent to adopt ~~must~~ MAY provide that the individual who is
17 relinquishing waives notice of any proceeding for adoption.

18
19 **NEW SECTION. Section 52. Consequences of relinquishment and consent to adopt.** Except under
20 a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is
21 executed by a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The
22 relinquishment and consent to adopt:

23 (1) unless a court orders otherwise to protect the welfare of the child, entitles the department,
24 agency, or prospective adoptive parent named or described to the legal and physical custody of the child
25 and imposes on that department, agency, or prospective adoptive parent responsibility for the support and
26 medical and other care of the child;

27 (2) terminates, AS PROVIDED IN [SECTION 44], any duty of the parent who executed the
28 document with respect to the child except for arrearages of child support; and

29 (3) terminates any right of the parent or guardian who executed the document to:

30 (a) object to the placement of the child for adoption by the department or agency; AND

- 1 (b) object to the child's adoption by the prospective adoptive parent; ~~and~~
2 ~~(c) notice of the proceeding for adoption.~~
3

4 **NEW SECTION. Section 53. Grounds for court to set aside relinquishment and consent.** (1) The
5 court shall set aside a relinquishment and consent to adopt if the individual who executed the
6 relinquishment and consent establishes:

7 (a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was
8 obtained by fraud or duress; or

9 (b) by a preponderance of the evidence, that a condition permitting revocation has occurred, as
10 expressly provided for in [section 50].

11 (2) A verbatim record of testimony must be made.
12

13 **NEW SECTION. Section 54. Remedy when relinquishment and consent to adopt revoked or set**
14 **aside -- expediency.** (1) If a relinquishment and consent to adopt that was executed by an individual is
15 revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the
16 child to the individual's custody and move to dismiss a proceeding for adoption or termination of the
17 individual's parental rights to the child unless:

18 (a) the department has legal custody pursuant to a court order;

19 (b) there are grounds for the department to seek a court order under the provisions of Title 41,
20 chapter 3; or

21 (c) the individual did not have legal custody of the child at the time the relinquishment and consent
22 to adopt was executed.

23 (2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no
24 existing court order providing for care and custody, the court shall issue an order providing for the care and
25 custody of the child according to the best interests of the child under any law applicable to the
26 circumstances of the case.

27 (3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment
28 or consent a child is not returned immediately by the department, agency, or prospective adoptive parent,
29 the individual may petition the court for appropriate relief. The action must take precedence over other
30 cases and matters in the court. The court shall examine the petition, hear the case, and render a decision

as soon as possible.

NEW SECTION. Section 55. Notarized denial of paternity -- no entitlement to notice. (1) Execution of a notarized denial of paternity of a child is a voluntary act that constitutes a waiver of all parental rights to the child, EXCEPT FOR THE DUTY TO PAY SUPPORT IF PATERNITY IS ESTABLISHED OR PRESUMED.

(2) A notarized denial of paternity is irrevocable when executed. An individual who has executed a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of either the hearing to terminate parental rights or the hearing on an adoption petition.

NEW SECTION. Section 56. Notarized acknowledgment of paternity and denial of interest in custody -- no entitlement to notice. (1) Submission of a notarized acknowledgment of paternity and a denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental rights to the child BUT DOES NOT ABSOLVE THE PERSON OF THE DUTY TO PAY SUPPORT.

(2) An individual who has executed an acknowledgment of paternity and denial of interest in the custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the acknowledgment of paternity and denial of interest in custody, the individual has ~~strictly~~ complied with all of the requirements of [section 22] and has done so within the time limits established in [section 23].

NEW SECTION. Section 57. Timing of proceedings to terminate. (1) In order to provide notice to a putative father at the earliest possible time of an expectant mother's intent to release an expected child for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption prior to the birth of the child.

(2) A petition to terminate parental rights may also be filed after a child is born.

NEW SECTION. Section 58. Expected child -- filing of petition indicating intent to release or consent to adoption. (1) A pregnant individual may file a petition with the court indicating the intention to place an expected child for adoption.

(2) The petition must include the following information:

- 1 (a) the individual's intent to release the expected child for adoption;
- 2 (b) the approximate date and location of conception;
- 3 (c) the expected date of delivery;
- 4 (d) any information concerning the identity and whereabouts of any putative or presumed father
- 5 of the expected child ~~unless the birth mother relies on the right to privacy~~; and
- 6 (e) in a situation in which there is a presumed father, the grounds upon which the individual relies
- 7 in contending that the nonexistence of the father and child relationship can be established in an action
- 8 brought under 40-6-107.
- 9 (3) The petition may allege more than one putative or presumed father.
- 10 (4) The petition must be signed by the petitioner and notarized.

11

12 **NEW SECTION. Section 59. Notice to any named father of intent to release child for adoption.**

- 13 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
- 14 child for adoption.
- 15 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
- 16 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
- 17 of the child. Proof of service must be filed with the court.
- 18 (3) A notice of intent to release directed to a putative father must indicate the approximate date
- 19 and location of conception of the child and the expected date of birth and must inform the putative father
- 20 that:
- 21 (a) in order to protect the putative father's rights to the child, the putative father is required to file
- 22 notice of intent to claim paternity before the expected date of birth;
- 23 (b) the putative father is required to appear at the hearing at the time and date set by the court;
- 24 (c) the failure to file notice of intent to claim paternity before the expected date of birth:
- 25 (i) constitutes a waiver of the right to receive the notice provided for in [section ~~22~~ 66];
- 26 (ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and
- 27 (iii) will result in the court's termination of the putative father's rights to the child.
- 28 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
- 29 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
- 30 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds

1 for seeking the declaration.

2

3 **NEW SECTION. Section 60. Notice to any named father of intent to release child for adoption.**

4 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
5 child for adoption.

6 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
7 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
8 of the child. Proof of service must be filed with the court.

9 (3) A notice of intent to release directed to a putative father must indicate the approximate date
10 and location of conception of the child and the expected date of birth and must inform the putative father:

11 ~~(a) that in order to protect the putative father's rights to the child, the putative father is required~~
12 ~~to register with the putative father registry as of the close of business on the expected date of birth of the~~
13 ~~child;~~

14 ~~(b)(A)~~ that the putative father is required to appear at the hearing at the time and date set by the
15 court;

16 ~~(c)(B)~~ of the rights and responsibilities to which the putative father will be entitled upon registering
17 with the putative father registry; and

18 ~~(d)(C)~~ that the failure to TIMELY comply with all requirements of filing with the putative father
19 registry ~~before the expected date of birth:~~

20 (i) constitutes a waiver of the right to receive the notice provided for in [section 22]; AND

21 ~~(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and~~

22 ~~(iii)(II) will~~ MAY result in the court's termination of the putative father's rights to the child.

23 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
24 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
25 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds
26 for seeking the declaration.

27

28 **NEW SECTION. Section 61. Venue.** Proceedings to terminate parental rights may be filed in the
29 court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing
30 the child is located.

1 **NEW SECTION. Section 62. Necessity for parental rights to be terminated.** A child is not legally
2 free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

- 3 (1) as provided in [sections 1 through 156];
4 (2) pursuant to Title 41, chapter 3; or
5 (3) of competent jurisdiction in another state or country.

6
7 **NEW SECTION. Section 63. Petition for termination of parental rights.** (1) Pending the termination
8 or other disposition of the rights of the father of the child, the birth mother may execute a relinquishment
9 and consent to adoption.

10 (2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the
11 relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and
12 notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title
13 41, chapter 3.

14 (3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned
15 as set forth in [section 50].

16 (4) Pending disposition of the petition, the court may enter an order authorizing temporary care of
17 the child.

18
19 **NEW SECTION. Section 64. Contents of petition for termination of parental rights.** (1) The
20 petition for termination of parental rights must state:

- 21 (a) the identity of the petitioner;
22 (b) the date and location of the birth of the child;
23 (c) the date of the relinquishment by the birth mother or relinquishing parent;
24 (d) the current location of the child;
25 (e) the names and locations, if known, of any putative or presumed father of the child;
26 (f) efforts and inquiries made to locate any parent whose identity is known but whose whereabouts
27 are unknown;
28 (g) the grounds on which the parental rights of any ~~putative or presumed father~~ **PARENT** to the
29 child should be terminated;
30 (h) whether a putative or presumed father is one from whom consent is not required;

1 (i) whether court orders from any other proceeding have been issued terminating parental rights
2 to the child who is the subject of the petition;

3 (j) any other evidence supporting termination of the legal rights that a person has with regard to
4 the child; and

5 (k) a request for custody of the child prior to the adoption.

6 (2) The petitioner shall file with the petition for termination of parental rights the following
7 documents received in support of the petition:

8 (a) any relinquishments and consents to adoption;

9 (b) any denials of paternity;

10 (c) any acknowledgments of paternity and denial of parental rights;

11 (d) any response from the department to a request of whether any notice of intent to claim
12 paternity has been filed;

13 (e) a counseling report required under [section 48]; ~~and~~

14 (f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service
15 received-; AND

16 (G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE
17 COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

18
19 NEW SECTION. **Section 65. Contents of petition for termination of parental rights.** (1) The
20 petition for termination of parental rights must state:

21 (a) the identity of the petitioner;

22 (b) the date and location of the birth of the child;

23 (c) the date of the relinquishment by the birth mother or relinquishing parent;

24 (d) the current location of the child;

25 (e) the names and locations, if known, of any putative or presumed father of the child;

26 (f) whether a parent is one from whom consent is not required;

27 (g) whether court orders from any other proceeding have been issued terminating parental rights
28 to the child that is the subject of the petition;

29 (h) any other evidence supporting termination of the legal rights that a person has with regard to
30 the child; and

1 (i) a request for temporary custody of the child prior to the adoption.

2 (2) The petitioner shall file with the petition for termination of parental rights the following
3 documents received in support of the petition:

4 (a) any relinquishments and consents to adoption;

5 (b) any denials of paternity;

6 (c) any acknowledgments of paternity and denial of parental rights;

7 (d) any affidavits from the putative father registry that have been executed by the department;

8 (e) a counseling report required under [section 48]; ~~and~~

9 (f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service
10 received; AND

11 (G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE
12 COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

13
14 NEW SECTION. **Section 66. Notice of hearing -- service.** (1) Notice of a hearing to be held on
15 the petition for termination of parental rights must be served in any manner appropriate under the Montana
16 Rules of Civil Procedure or in any manner that the court may direct on:

17 (a) a putative or presumed father;

18 (b) a putative father who was not served with a notice of intent to release at least 20 days before
19 the expected date of birth as specified in the notice of intent to release;

20 (c) a spouse, if the parent relinquishing the child for adoption was married to that person at the
21 time of conception of the child or at any time after conception but prior to birth;

22 (d) a parent or legal guardian of the child in question who has not waived notice; or

23 (e) any other person who is reasonably believed to be the father.

24 (2) The notice of hearing must inform the putative or presumed father that failure to appear at the
25 hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's
26 termination of the individual's rights to the child.

27 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
28 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
29 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
30 entitled to receive notice is sufficient.

(4) If a person has not been identified as the father or putative father of the child, the court, on the basis of all information available, shall determine whether publication of notice of the proceeding is likely to lead to identification. If so, the court shall order publication in the manner that it considers appropriate. The name of the birth mother may be included in the publication only with the mother's written consent.

(5) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who has not waived the right to notice of hearing and that person is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

NEW SECTION. Section 67. Notice of hearing -- service. (1) Notice of a hearing to be held on the petition for termination of parental rights must be served in any manner appropriate under the Montana Rules of Civil Procedure or in any manner that the court may direct on:

(a) a putative or presumed father who has timely and properly complied with the putative father registry;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(C) A PERSON ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD FOR THE PURPOSE OF CHILD SUPPORT;

(D) A PERSON WHO IS RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S FATHER;

(E) A PERSON WHO IS OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF AN AUTHORIZED AGENCY AND WHO IS REPRESENTING TO THE PUBLIC THAT THE PERSON IS THE CHILD'S FATHER;

~~(F)~~ (F) a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth; or

~~(G)~~ (G) a parent or legal guardian of the child in question who has not waived notice.

(2) The notice of hearing must inform the putative or presumed father or other parent that failure to appear at the hearing constitutes a ~~denial~~ WAIVER of the individual's interest in custody of the child and

1 will result in the court's termination of the individual's rights to the child.

2 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
3 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
4 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
5 entitled to receive notice is sufficient.

6 (4) If the court finds that the father of the child is a person who did not receive either a timely
7 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
8 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
9 adjourn further proceedings until that person is served with a notice of hearing.

10
11 **NEW SECTION. Section 68. Hearing on petition to terminate parental rights.** (1) The court shall
12 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
13 ~~father~~ PARENTS of the child.

14 (2) If ~~the mother has failed to name~~ a putative father HAS NOT BEEN NAMED and no one has ~~filed~~
15 ~~notice of intent to claim paternity~~ REGISTERED WITH THE PUTATIVE FATHER REGISTRY, the court shall
16 cause inquiry to be made in an effort to identify ~~the~~ ANY LEGAL father. The inquiry must include whether
17 the mother was married at the time of conception of the child or at any time after conception AND PRIOR
18 TO BIRTH.

19 (3) Based on the evidence received and the court's inquiry, the court shall enter a finding
20 identifying the father or declaring that the identity of the father could not be determined.

21 (4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
22 court shall enter an order concerning the parental rights to the child.

23 (5) If the court terminates the parental rights to the child and the department, agency, or
24 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
25 shall issue an order awarding custody of the child to the petitioner.

26
27 **NEW SECTION. Section 69. Hearing on petition to terminate parental rights.** (1) The court shall
28 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
29 ~~father~~ PARENT of the child.

30 (2) If ~~the mother has failed to name~~ a putative father HAS NOT BEEN NAMED and no one has

~~registered with the putative father registry~~ FILED NOTICE OF INTENT TO CLAIM PATERNITY, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must include:

(a) whether the mother:

(i) was married at the time of conception of the child or at any time after conception AND PRIOR TO BIRTH;

(ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the child; and

(iii) has received support payments or promises of support payments for the child or in connection with the pregnancy; and

(b) whether any person formally or informally acknowledged possible paternity to the child.

(3) PROOF OF SERVICE OF NOTICE OR PROOF OF ACKNOWLEDGEMENT OF SERVICE ON ANY PERSON OR PROOF OF WAIVER BY A PERSON LEGALLY REQUIRED TO BE GIVEN NOTICE MUST BE FILED WITH THE COURT.

~~(3)(4)~~ Based on the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father could not be determined.

~~(4)(5)~~ Based on the grounds set forth in [section 70] and the evidence received at the hearing, the court shall enter an order concerning the parental rights to the child.

~~(5)(6)~~ If the court terminates the parental rights to the child and the department, agency, or prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court shall issue an order awarding custody of the child to the petitioner.

NEW SECTION. Section 70. Grounds for termination of parental rights. The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

(b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

(c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the child executed pursuant to [section 56];

(2) a determination under [section 71] that the parent is unfit;

(3) a determination under [section 72] that the relationship of parent and child does not exist; or

1 (4) a determination that the parent has irrevocably waived parental rights by failing to timely act
2 to protect the rights.

3
4 NEW SECTION. Section 71. Finding of unfitness. (1) The court may terminate parental rights for
5 purposes of making a child available for adoption on the grounds of unfitness if:

6 (a) the court makes a determination that the parent has been judicially deprived of custody of the
7 child on account of abuse or neglect toward the child;

8 (b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully
9 abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United
10 States;

11 (c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the
12 support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

13 (d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to
14 support either the child that is the subject of the adoption proceedings or other children with the same birth
15 mother;

16 (e) the parent has been found guilty by a court of competent jurisdiction of:

17 (i) aggravated assault on the adoptee, as provided in 45-5-202;

18 (ii) sexual assault on a child, as provided in 45-5-502;

19 (iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

20 (iv) incest, as provided in 45-5-507, if the victim was a child;

21 (v) homicide of a child, as provided in 45-5-102 or 45-5-103;

22 (vi) sexual abuse of a child, as provided in 45-5-625; or

23 (vii) ritual abuse of a minor, as provided in 45-5-627;

24 (f) the child has been maintained by a public or private children's institution, a charitable agency,
25 a licensed child-placing agency, or the department for a period of 1 year without the parent contributing
26 to the support of the child during that period, if able;

27 (g) a finding is made for a parent who is given proper notice of hearing:

28 (i) that the parent has been convicted of a crime of violence or of violating a restraining or
29 protective order; and

30 (ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to

1 maintain a relationship of parent and child with the child;

2 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the
3 petition to terminate parental rights and:

4 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the
5 child; and

6 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

7 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is
8 not able or willing to promptly assume legal and physical custody of the child and to pay for the child's
9 support in accordance with the respondent's financial means;

10 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
11 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain
12 contact with the child and to pay for the child's support in accordance with the respondent's financial
13 means;

14 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial
15 harm to the physical or psychological well-being of the child because the circumstances of the child's
16 conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the
17 respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a
18 relationship of parent and child with the child; or

19 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

20 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant
21 factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the
22 role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability
23 to care for the child, the age of the child, the quality of any previous relationship between the respondent
24 and the child and between the respondent and any other children, the duration and suitability of the child's
25 present custodial environment, and the effect of a change of physical custody on the child.

26
27 **NEW SECTION. Section 72. Determination that no parent and child relationship exists.** For
28 purposes of making a child available for adoption, the court may terminate the parental rights of a putative
29 father on the grounds that the parent and child relationship does not exist if:

30 (1) a judicial determination is made under 40-6-107 that the parent and child relationship does not

1 exist. This includes the termination of the parental rights of the husband of the mother who is placing the
2 child for adoption or the parental rights of an individual who is a presumed father of the child.

3 (2) a determination is made that:

4 (a) an individual has not timely registered with the putative father registry; ~~and~~

5 (B) A PERSON HAS NOT BEEN ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD
6 FOR THE PURPOSE OF CHILD SUPPORT;

7 (C) A PERSON HAS NOT BEEN RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S
8 FATHER;

9 (D) A PERSON IS NOT OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE
10 TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF
11 AN AUTHORIZED AGENCY AND A PERSON IS NOT REPRESENTING TO THE PUBLIC THAT THE PERSON
12 IS THE CHILD'S FATHER; OR

13 ~~(b)(E)~~ (E) the child's mother was not married at the probable time of the child's conception or at the
14 time the child was born; or

15 (3) a putative father who ~~timely registered with the putative father registry~~ appears at the hearing
16 but is unable to establish by a preponderance of the evidence the minimum requirements provided in
17 [section 73] for demonstrating the establishment of a substantial relationship with the child.

18
19 NEW SECTION. Section 73. Putative father -- termination based upon failure to establish
20 substantial relationship. (1) The parental rights of a putative father may be terminated by the court if the
21 putative father has failed to timely establish and maintain a substantial relationship with the child.

22 (2) A putative father who is not married to the child's mother but who has openly lived with the
23 child SINCE THE CHILD'S BIRTH OR for a period of 6 months immediately preceding placement of the child
24 with adoptive parents and has openly claimed to be the father of the child during that period is considered
25 to have developed a substantial relationship with the child and to have otherwise met the requirements of
26 this section.

27 (3) In order to meet the minimal showing of having established a substantial relationship with
28 regard to a child who is the subject of an adoption proceeding ~~occurring more than 6 months after the~~
29 ~~child's birth~~, a putative father has the burden of showing that the putative father has:

30 (a) demonstrated a full commitment to the responsibilities of parenthood, ~~when not prevented from~~

1 ~~doing so by the person or authorized agency having lawful custody of the child,~~ by providing financial
2 support for the child in a fair and reasonable sum and in accordance with the putative father's ability and
3 either:

4 (i) visiting the child at least monthly when physically and financially able to do so; or

5 (ii) having regular contact with the child or with the person or agency having the care and custody
6 of the child when physically and financially ~~unable~~ ABLE to do so; and

7 (b) manifested an ability and willingness to assume legal and physical custody of the child if the
8 child was not in the physical custody of the other parent.

9 (4) In order to meet the minimal showing of having established a substantial relationship with
10 regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of
11 age at the time the child becomes the subject of adoption proceedings, a putative father has the burden
12 to show that:

13 (a) the putative father has manifested a full commitment to parental responsibilities by performing
14 all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and
15 consent for adoption, including registering with the putative father registry; and

16 (b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable
17 amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with
18 the putative father's means when not prevented from doing so by the person or authorized agency having
19 lawful custody of the child;

20 (c) making reasonable and consistent payments, in accordance with the putative father's means,
21 for the support of the child since birth;

22 (d) visiting regularly with the child; and

23 (e) manifesting an ability and willingness to assume legal and physical custody of the child if,
24 during this time, the child was not in the physical custody of the mother.

25 (5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by
26 evidence of acts specified in this section does not preclude a determination that the father failed to meet
27 the requirements of this section.

28
29 NEW SECTION. **Section 74. Irrevocable waiver of parental rights.** (1) The court may find an
30 irrevocable waiver of parental rights of:

1 (a) a putative father who was timely served with notice of intent to release if the court is provided
2 with proof of service and proof that the putative father failed to timely file a notice of intent to claim
3 paternity;

4 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
5 hearing; or

6 (c) a parent or putative father who is served with notice of proceedings and appears and denies
7 any interest in custody of the child.

8 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
9 of all rights to the child.

10
11 **NEW SECTION. Section 75. Irrevocable waiver of parental rights.** (1) The court may find an
12 irrevocable waiver of parental rights of:

13 (a) a putative father who was timely served with notice of intent to release if the court is provided
14 with proof of service and proof that the putative father failed to timely comply with the requirements of the
15 putative father registry;

16 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
17 hearing; or

18 (c) a parent or putative father who is served with notice of proceedings and appears and denies
19 any interest in custody of the child.

20 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
21 of all rights to the child.

22
23 **NEW SECTION. Section 76. Appearance of parent at hearing -- determination of custody.** (1) If
24 a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of
25 rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete
26 discovery and shall set a hearing on the determination of the parent's rights to the child.

27 (2) At the hearing, the court shall consider whether there is a basis for terminating parental rights
28 and whether the best interests of the child will be served by granting custody to the respondent parent,
29 the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental
30 placement adoption.

(3) If the petitioner has established that there are grounds for terminating parental rights and it is in the best interests of the child for termination to occur, those rights must be terminated.

NEW SECTION. Section 77. Effect of order terminating parental rights. (1) An order granting the petition for termination of parental rights:

~~(1)~~(A) terminates the parent and child relationship except for an obligation for arrearages of child support;

~~(2)~~(B) terminates the jurisdiction of the court over the child in any dissolution or separate maintenance action;

~~(3)~~(C) extinguishes any right the parent had to withhold consent to a proposed adoption of the child or to further notice of a proceeding for adoption; and

~~(4)~~(D) awards custody of the child to the department, agency, or prospective adoptive parent to whom the relinquishment was given if the department, agency, or prospective adoptive parent has agreed in writing to accept custody of the child until the adoption is finalized.

(2) A PERSON ACCEPTING CUSTODY IS RESPONSIBLE FOR THE SUPPORT OF THE CHILD.

NEW SECTION. Section 78. Appeal. An order terminating parental rights is a final order for purposes of appeal.

NEW SECTION. Section 79. Expediency. A contested termination of parental rights action must take precedence over other cases and matters in the court or on appeal. The court shall examine any issues raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final adoption decree and shall render a decision as soon as possible.

NEW SECTION. Section 80. Finality. Subject to the disposition of a timely appeal, upon expiration of 6 months after an order terminating parental rights has been issued, the order may not be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or the subject matter.

NEW SECTION. Section 81. Duty to disclose information -- form -- availability -- filing. (1) Except

1 for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent,
2 the department, or an agency shall provide a prospective adoptive parent with social and medical histories
3 of the birth families, including tribal affiliation, if applicable.

4 (2) In a direct parental placement adoption, the birth family social and medical histories must be
5 completed on a form provided by the department and filed with the court when the adoption petition is
6 filed.

7 (3) The department shall make a form available to agencies and court administrators for public
8 distribution.

9
10 **NEW SECTION. Section 82. Retention of disclosures.** (1) In a direct parental placement adoption,
11 the disclosures required by [section 81] must be filed with the court in support of the notice of parental
12 placement filed pursuant to [section 95] and must be permanently maintained.

13 (2) In an adoption arranged by the department or an agency, the disclosures required by [section
14 81] must be permanently maintained in the files of the department or the agency.

15
16 **NEW SECTION. Section 83. Preplacement evaluation -- timing.** (1) A child may not be placed for
17 purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement
18 evaluation completed to determine fitness and readiness as an adoptive parent.

19 (2) In a direct parental placement adoption, the placing parent must be provided with a copy of the
20 preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

21 (3) The required preplacement evaluation must provide all pertinent information pertaining to the
22 topics identified in [section 85].

23
24 **NEW SECTION. Section 84. Initiation of preplacement evaluation -- who conducts evaluation --**
25 **payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process
26 by:

27 (a) establishing a client relationship with the department or a licensed child-placing agency; or
28 (b) requesting a preplacement evaluation from either the department or a licensed child-placing
29 agency.

30 (2) The department may contract with a licensed social worker or a licensed child-placing agency

to conduct the evaluation.

(3) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or licensed child-placing agency's standards for placement of a child.

(4) A department or agency from which an individual is seeking to adopt a child may require the individual to be evaluated by its own qualified employee or independent contractor even if the individual has received a favorable preplacement evaluation from another evaluator.

(5) Fees for the study and report are set by the entity completing them and must be paid for by the prospective adoptive parent.

NEW SECTION. Section 85. Information to be reviewed in conducting preplacement evaluation.

(1) A preplacement evaluation must include a review of the following information about the prospective adoptive parent:

(a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over the age of 13 living in the prospective home;

(b) medical and social history and current health;

(c) assessment of potential parenting skills;

(d) assessment of ability to provide adequate financial support for a child; and

(e) assessment of the level of knowledge and awareness of adoption issues, including when appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

(2) (a) The prospective adoptive parent, the department of justice, and other state, county, and local agencies, after written notice to the subject of the study, shall give the department or agency completing the adoption study substantiated data pertaining to criminal convictions and any reports concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

(b) The adoption study must also include a check of the youth court records of each person over the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court shall release the requested information to the agency or department completing the adoption study. The study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member.

NEW SECTION. Section 86. Contents of preplacement evaluation. (1) The preplacement evaluation report must contain the following information if available:

- (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;
- (b) marital status and family history, including the age and location of any child of the individual and the identity of and relationship to anyone else living in the individual's household;
- (c) physical and mental health and any history of abuse of alcohol or drugs;
- (d) educational and employment history and any special skills;
- (e) property and income, including outstanding financial obligations as indicated in a current credit report or financial statement furnished by the individual;
- (f) any previous request for an evaluation or involvement in an adoptive placement and the outcome of the evaluation or placement;
- (g) whether the individual has been charged with or convicted of domestic violence or has been involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition of the charges;
- (h) whether the individual is subject to a court order restricting the individual's right to custody or visitation with a child;
- (i) whether the individual has been convicted of a crime other than a minor traffic violation;
- (j) whether the individual has located a parent interested in placing a child with the individual for adoption and, if so, a brief description of the parent and the child; and
- (k) any other fact or circumstance that may be relevant in determining whether the individual is suited to be an adoptive parent, including the quality of the environment in the individual's home and the functioning of other children in the individual's household.

(2) The report must contain recommendations regarding the suitability of the subject of the study to be an adoptive parent.

(3) A preplacement evaluation is valid for 1 year following its date of completion and must be updated if there is a significant change in circumstances.

(4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive

parent must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically address the appropriateness of placing the specifically identified child or children who will be the subject of the adoption proceedings with the prospective adoptive parent.

NEW SECTION. Section 87. Recommendation. (1) An evaluator shall assess the information required by [section 85] to determine if it raises a specific concern that placement of any child or a particular child in the home of the individual would pose a significant risk of harm to the physical or psychological well-being of the child.

(2) If an evaluator determines that the information assessed does not raise a specific concern, the evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment about any factor that in the evaluator's opinion makes the individual suited in general or for a particular child.

(3) If an evaluator determines that the information assessed raises a specific concern, the evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

NEW SECTION. Section 88. Distribution of evaluation -- retention -- immunity for evaluator. (1) ~~If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the evaluator shall give the individual a signed copy of the evaluation.~~ The evaluator shall furnish a copy of the evaluation to a department, agency, or other person authorized to place a child for adoption AND, UPON PAYMENT BY THE PERSON EVALUATED OF THE COST OF THE EVALUATION SERVICES, TO THE PERSON EVALUATED.

~~(2) The evaluator shall provide a signed copy of the evaluation to the individual and to the department. The department shall permanently retain the copy of the evaluation.~~

~~(3)(2)~~ (2) An evaluator shall retain the original of a completed or incomplete preplacement evaluation and a list of each source for each item of information in the evaluation ~~for 2 years.~~ AN EVALUATOR WHO CEASES TO DO BUSINESS IN MONTANA SHALL GIVE THE EVALUATOR'S RECORDS TO THE DEPARTMENT FOR RETENTION.

~~(4)(3)~~ (3) An evaluator, EXCEPT A DEPARTMENT EVALUATOR, who conducted an evaluation in good faith is not subject to civil liability for anything contained in the evaluation.

1 **NEW SECTION. Section 89. Action by department.** If, before a decree of adoption is issued, the
2 department learns from an evaluator or another person that a child has been placed for adoption with an
3 individual who is the subject of a preplacement evaluation on file with the department containing a finding
4 of unsuitability, the department shall immediately review the evaluation and make a determination of
5 whether the department has authority pursuant to Title 41, chapter 3, to intervene.

6
7 **NEW SECTION. Section 90. Court waiver for relatives.** The court may waive the requirement of
8 a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended
9 family member of the child. A postplacement evaluation must be conducted during the pendency of a
10 proceeding for adoption.

11
12 **NEW SECTION. Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental
13 placement adoption, the preplacement evaluation must be filed with the court in support of the petition to
14 terminate parental rights for purposes of adoption.

15 (2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement
16 evaluation must be permanently maintained in the files of the department or the licensed child-placing
17 agency.

18
19 **NEW SECTION. Section 92. Requirement for preplacement evaluation.** (1) Before the department
20 or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent
21 and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

22 (2) The department or agency shall prepare a written report containing the results of its evaluation.

23
24 **NEW SECTION. Section 93. Parties to direct parental placement adoption.** A parent of a child may
25 directly place the child for adoption with a specifically identified prospective adoptive parent who:

- 26 (1) resides in Montana or in another state that allows direct parental placement;
27 (2) is known to and has been personally selected by the parent; and
28 (3) has previously obtained a favorable preplacement evaluation.

29
30 **NEW SECTION. Section 94. Duties of placing parent.** (1) A parent who is directly placing a child

for adoption shall execute a voluntary relinquishment and consent to adopt, including:

(a) receiving the counseling required by [section 48]; and

(b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) ~~Unless a birth mother relies on the right to privacy, a~~ A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including:

(a) any current spouse;

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and

(c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

(a) the disclosures of medical and social history required pursuant to [section 81];

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent.

NEW SECTION. Section 95. Direct parental placement -- information to be filed. (1) A parent who

1 proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who
2 is not the child's stepparent or an extended family member shall file with the court of the county in which
3 the prospective adoptive parent or the parent making the placement resides the following:

4 (a) a notice of parental placement containing the following information:

5 (i) the name and address of the placing parent;

6 (ii) the name and address of each prospective adoptive parent;

7 (iii) the name and address or expected date and place of birth of the child;

8 (iv) the identity and information on the location of any other legal parent or guardian of the child

9 AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including any current
10 spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time
11 of conception or birth of the child, and any adoptive parent;

12 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child
13 within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

14 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each
15 of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

16 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

17 (c) the counseling report required by [section 48];

18 (d) the medical and social history disclosures required by [section 81];

19 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
20 parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement
21 by each person furnishing information in the report attesting to the truthfulness of the information furnished
22 by that person;

23 (f) a certified copy of the child's birth certificate or other document certifying the place and date
24 of the child's birth;

25 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

26 (h) the preplacement evaluation.

27 (2) The notice of parental placement must be signed by the parent making the placement.

28
29 NEW SECTION. **Section 96. Duty of prospective adoptive parent to provide preplacement**
30 **evaluation.** (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt,

the prospective adoptive parent shall obtain a favorable preplacement evaluation.

(2) A placing parent must be provided with a copy of the preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

NEW SECTION. Section 97. Duty to promptly petition. (1) Within 30 days after the filing of a notice of parental placement or the execution of a relinquishment and consent to the adoption of the child, whichever is later, a prospective adoptive parent shall promptly act to resolve the child's legal status by filing:

(a) a petition for termination of parental rights for purposes of adoption, including a request for custody, that includes:

(i) the relinquishment and consent to adopt executed by any legal parent other than the placing parent who has filed the notice of parental placement;

(ii) a certified copy of any court order terminating the rights and duties of any parent or guardian of the child; and

(iii) any other evidence supporting termination of the legal rights a person has with regard to the child;

(b) a petition to adopt the child who is the subject of the proceedings;

(c) a copy of the preplacement evaluation pertaining to the adoptive parent;

(d) a copy of an agreement with the department or a licensed child-placing agency agreeing to accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;

(e) a disclosure of all disbursements made with regard to the adoptive placement to date; and

(f) an affidavit from the department reporting on whether any individual has registered with the putative father registry and claims an interest in the child.

(2) The prospective adoptive parent shall request that the court promptly notice the matters provided for in subsection (1) for hearing in a timely manner.

NEW SECTION. Section 98. Custody order. (1) The court shall consider the petition to adopt and shall make a determination as to whether temporary custody should be awarded to the petitioner. In making that determination, the court shall consider:

(a) the preplacement evaluation that pertains specifically to placement of the child who is the

1 subject of the adoption petition with the petitioner; and

2 (b) if any significant change in the petitioner's or child's circumstances has occurred since
3 preparation of the preplacement evaluation.

4 (2) Upon a determination that it is in the best interests of the child, the court shall enter an order
5 granting temporary custody to the prospective adoptive parent.

6 (3) Upon a determination that it is not in the best interests of the child to place custody with the
7 prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing
8 parent and shall make any other order with regard to the custody of the child that is necessary to protect
9 the well-being of the child.

10

11 **NEW SECTION. Section 99. Period for postplacement supervision.** (1) In a direct parental
12 placement adoption, the court shall maintain jurisdiction over the placement during a postplacement
13 evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

14 (2) The postplacement evaluation period must be supervised and evaluated by a qualified person
15 appointed, contracted with, or employed by:

16 (a) the department, if the department has accepted supervision of the placement; or

17 (b) a licensed child-placing agency.

18 (3) The court shall provide the evaluator with copies of the petition for adoption and the items filed
19 with the petition.

20 (4) A decree of adoption may not be entered for at least 6 months from the date an order is entered
21 granting temporary custody during the pendency of the proceedings.

22

23 **NEW SECTION. Section 100. Postplacement evaluation for direct parental placement adoption.**

24 (1) An evaluation must be based on a personal interview with the prospective adoptive parent in the
25 prospective parent's home and an observation of the relationship between the child and the prospective
26 adoptive parent.

27 (2) An evaluation must be in writing.

28 (3) At a minimum, the evaluation must include the following information:

29 (a) assessment of adaptation by the prospective adoptive parent to parenting the child;

30 (b) assessment of the health and well-being of the child in the prospective adoptive home;

(c) analysis of the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community;

(d) assessment of the level of incorporation of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives; and

(e) an account of any change in the prospective adoptive parent's marital status or family history, physical or mental health, home environment, property, income, or financial obligations since the filing of the preplacement evaluation.

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

NEW SECTION. Section 101. Time and filing of evaluation. (1) Unless the court for good cause allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within not less than 90 days and not more than 180 days after receipt of the court's order for an evaluation.

(2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be filed immediately and must explain why the concern poses a significant risk of harm to the physical or psychological well-being of the child.

(3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed with the court and shall permanently retain a copy of the evaluation and a list of every source for each item of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations in the evaluator's possession must be forwarded to the department for permanent retention.

NEW SECTION. Section 102. Motion to enter adoption decree. (1) The prospective adoptive parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has granted temporary custody to the prospective adoptive parent.

(2) The motion must be supported by the following documents:

(a) the postplacement evaluation prepared pursuant to [section 100]; and

(b) an updated list of all disbursements made in connection with the adoption proceeding.

(3) A notice of hearing is not required for any party whose parental rights have been terminated in prior proceedings.

1 (4) The court shall consider the petition and shall grant or deny the petition pursuant to the
2 provisions of [sections 125 through 134].

3 (5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the
4 petition has been denied and shall take appropriate action for placement of the child pursuant to [section
5 131].

6 (6) Finality of the decree or the order denying the decree and the time for appeal are determined
7 pursuant to [section 137].

8
9 **NEW SECTION. Section 103. Records.** All records filed with the court in a direct parental
10 placement adoption must be permanently maintained by the court.

11
12 **NEW SECTION. Section 104. Factors to be considered -- best interests of child.** (1) All relevant
13 factors must be considered in determining the best interests of the child in an adoption proceeding. Factors
14 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a
15 child, and familial stability must be considered. In determining the best interests of the child, the following
16 factors with regard to a prospective adoptive parent may be considered:

17 (a) age, as it relates to health, earning capacity, provisions for the support of a child, or other
18 relevant circumstances;

19 (b) marital status, as it relates to the ability to serve as a parent in particularized circumstances;
20 and

21 (c) religion, as it relates to the ability to provide the child with an opportunity for religious or
22 spiritual and ethical development and as it relates to the express preference of a birth parent or a child to
23 be placed with an adoptive parent of a particular religious faith or denomination.

24 (2) For purposes of ensuring that the best interests of the child are met, the department or a
25 licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner,
26 information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The
27 authority granted by this subsection includes the authority to receive and to consider, consistent with the
28 best interests of the child, the preferences of birth parents relating to the age, marital status, or religious
29 beliefs of an adoptive parent.

30 (3) Consideration of religious factors by a licensed child-placing agency that is affiliated with a

particular religious faith is not arbitrary consideration of religion within the meaning of this section.

NEW SECTION. Section 105. Parties to department or agency placement. A parent of a child may relinquish the child for adoption to the department or a licensed child-placing agency. The department or agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43] before the relinquishment is valid.

NEW SECTION. Section 106. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

(2) A parent placing a child for adoption shall identify and provide information on the location of:

(a) any other legal parent or guardian of the child AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including any current spouse; and

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.

(3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption shall provide:

(a) the disclosures of medical and social history;

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

NEW SECTION. Section 107. Counseling requirements. To the extent required by [sections 1 through 156] and the department's or agency's standards, the department or agency shall provide counseling to the parties involved in the adoption.

NEW SECTION. Section 108. Waiting period following placement of child. (1) Once the department or agency has received custody of the child and placed the child for adoption, the department or agency shall supervise and evaluate the placement during a 6-month postplacement evaluation period.

(2) The department or agency may recommend in the postplacement evaluation filed with the petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement evaluation period if:

(a) (i) a period of at least 6 months has elapsed since the department or agency placed the child in the prospective adoptive home; and

(ii) the department or agency has completed a postplacement evaluation during that period; or

(b) (i) a postplacement evaluation has been completed and filed with the court; and

(ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement evaluation period.

(3) The department or an agency may recommend the waiver of the 6-month postplacement evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a foster child for at least 1 year.

NEW SECTION. Section 109. Petition for adoption filed by prospective adoptive parent. After the child has been placed by the department or agency with the prospective adoptive parent, the parent shall file a petition for adoption.

NEW SECTION. Section 110. Postplacement department or agency evaluation. (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospective adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is suitable for the child;

(c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;

(d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

(e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;

(f) any other circumstances and conditions that may have a bearing on the adoption and of which the court should have knowledge;

(g) whether the agency waives notice of the proceeding;

(h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and

(i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

NEW SECTION. Section 111. Consent to adoption. (1) Upon the filing of the petition for adoption by the prospective adoptive parent, the department or agency that has custody of the child shall file its consent to adoption.

(2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the department or an agency in connection with that petition for adoption is not permitted.

(3) Upon a motion to withdraw consent, notice and opportunity to be heard must be given to the petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests of the child will be furthered, issue a written order permitting the withdrawal of the consent.

(4) The entry of a decree of adoption renders a consent irrevocable.

NEW SECTION. Section 112. Relinquishment to stepparent. (1) A parent may relinquish parental rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended family. The relinquishment must be executed in accordance with [sections 42 through 52]. The relinquishment may be executed at any time after the child is 72 hours old.

(2) The stepparent or extended family member shall accept the relinquishment in writing.

NEW SECTION. Section 113. Standing to adopt stepchild. (1) A stepparent has standing to file a petition for adoption of a minor stepchild of the stepparent's spouse if:

1 (a) the spouse has sole legal and physical custody of the child and the child has been in the
2 physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for
3 adoption;

4 (b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared
5 mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with
6 the stepparent during the 12 months preceding the filing of the petition; or

7 (c) the department or an agency placed the child with the stepparent.

8 (2) For good cause shown, a court may allow an individual who is not the stepparent but who has
9 the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated
10 as if the petitioner were a stepparent.

11 (3) A petition for adoption by a stepparent may be joined with a petition for termination of parental
12 rights.

13
14 **NEW SECTION. Section 114. Consent to adoption.** (1) Upon the filing of the petition for adoption
15 by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or
16 116].

17 (2) If the child has attained 12 years of age the child must consent to the adoption.

18
19 **NEW SECTION. Section 115. Consent to adoption -- stepparent's spouse.** (1) A consent to
20 adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an
21 individual authorized to take acknowledgements.

22 (2) A consent must be in writing and must state that:

23 (a) the parent executing the consent has legal and physical custody of the parent's child and
24 voluntarily and unequivocally consents to the adoption of the child by the stepparent;

25 (b) the adoption will not terminate the parental relationship between the parent executing the
26 consent and the child; and

27 (c) the parent executing the consent understands and agrees that:

28 (i) the adoption will terminate the relationship of parent and child between the child's other parent
29 and the child and will terminate any existing court order for custody, visitation, or communication with the
30 child;

(ii) the child and any descendant of the child will retain rights of inheritance from or through the child's other parent; and

(iii) a court order for visitation or communication with the child by an individual related to the child through the parent executing the consent or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

NEW SECTION. Section 116. Consent to adoption -- child's other parent. A consent executed by a child's parent who is not the stepparent's spouse must be in writing and must state that:

(1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right that the parent executing the consent has to legal or physical custody of the child;

(2) the parent executing the consent understands and agrees that:

(a) the adoption will terminate the parent's parental relationship with the child and will terminate any existing court order for custody, visitation, or communication with the child;

(b) the child and any descendant of the child will retain rights of inheritance from or through the parent executing the consent; and

(c) a court order for visitation or communication with the child by an individual related to the child through the child's other parent or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

NEW SECTION. Section 117. Postplacement evaluation period -- waiver. If the child is a stepchild or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the best interests of the child, waive the 6-month postplacement evaluation period and the postplacement evaluation and grant a decree of adoption.

NEW SECTION. Section 118. Petition for adoption -- notice -- hearing. A stepparent who desires to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement evaluation, give notice of the hearing on the petition, and attend a hearing conducted by the court.

1 **NEW SECTION. Section 119. Legal consequences of adoption of stepchild.** (1) Except as
2 provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent
3 are the same as the consequences under [section 136].

4 (2) An adoption by a stepparent does not affect:

5 (a) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's
6 spouse or deceased spouse;

7 (b) an existing court order for visitation or communication with a child by an individual related to
8 the adoptee through either parent; or

9 (c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession
10 through or from the adoptee's former parent.

11 (3) Failure to comply with an agreement or order is not a ground for challenging the validity of an
12 adoption by a stepparent.

13

14 **NEW SECTION. Section 120. Arrearages of child support.** A termination of a parent's rights and
15 responsibilities toward a child does not cancel any responsibility to pay arrearages of child support unless
16 the party to whom the arrearages are owed agrees in writing to waive payment.

17

18 **NEW SECTION. Section 121. Adoption of adult.** A person who has attained the age of legal
19 majority may be adopted without the consent of the person's parents.

20

21 **NEW SECTION. Section 122. Who may adopt adult or emancipated minor.** (1) An adult may
22 adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt
23 the adult's spouse. An adoption of an incompetent individual of any age must comply with all requirements
24 set by law for the adoption of a child.

25 (2) An individual who has adopted an adult or emancipated minor may not adopt another adult or
26 emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the
27 adoptee.

28

29 **NEW SECTION. Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or
30 emancipated minor is required only of:

1 (a) the adoptee;

2 (b) the prospective adoptive parent; and

3 (c) the spouse of the prospective adoptive parent unless:

4 (i) the spouse and the prospective adoptive parent are legally separated; or

5 (ii) the court finds that the spouse is not capable of giving consent or is withholding consent
6 contrary to the best interests of the adoptee and the prospective adoptive parent.

7 (2) The consent of the adoptee and the prospective adoptive parent must:

8 (a) be in writing and be signed in the presence of the court or an individual authorized to take
9 acknowledgments;

10 (b) state that the parties agree to assume toward each other the legal relationship of parent and
11 child and to have all of the rights and be subject to all of the duties of that relationship; and

12 (c) state that the parties understand the consequences that the adoption may have for any right
13 of inheritance, property, or support.

14 (3) The consent of the spouse of the prospective adoptive parent:

15 (a) must be in writing and be signed in the presence of the court or an individual authorized to take
16 acknowledgments;

17 (b) must state that the spouse:

18 (i) consents to the proposed adoption; and

19 (ii) understands the consequences that the adoption may have for any right of inheritance,
20 property, or support that the spouse has; and

21 (c) may contain a waiver OF NOTICE of any proceeding for adoption.

22
23 **NEW SECTION. Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a
24 proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at
25 least 90 days immediately preceding the filing of a petition for adoption.

26 (2) A petition for adoption ~~may~~ **MUST** be filed in the court in the county in which a petitioner lives.

27
28 **NEW SECTION. Section 125. Procedure.** Except as otherwise provided in [sections 121 through
29 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in
30 proceedings for the adoption of an adult. The provisions concerning the counseling requirement,

1 preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable
2 to the adoption of an adult.

3
4 **NEW SECTION. Section 126. Petition for adoption.** (1) A petition for adoption must be filed in
5 triplicate, must be notarized by the petitioners, and must specify:

6 (a) the full names, ages, and place and duration of residence of the petitioners;

7 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

8 (c) the circumstances under which the petitioners obtained physical custody of the child and the
9 name of the individual or agency who placed the child;

10 (d) the date and place of birth of the child, if known;

11 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
12 by which the child is to be known;

13 (f) that it is the desire of the petitioners that the relationship of parent and child be established
14 between the petitioners and the child and to have all the rights and be subject to all the duties of that
15 relationship;

16 (g) a full description and statement of value of all property owned or possessed by the child;

17 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
18 adoption;

19 (i) that any applicable law governing interstate or intercountry placement was complied with;

20 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

21 (k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other
22 child in any court and the disposition of the petitions; and

23 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
24 for adoption.

25 (2) There must be attached to or accompanying the petition:

26 (a) any written consent required by [sections 125 through 134];

27 (b) a certified copy of any court order terminating the rights of the child's parents;

28 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
29 or visitation with the child;

30 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child

1 with a special need;

2 (e) the postplacement evaluation prepared pursuant to [section 100 or 110];

3 (f) a disclosure of any disbursements made in connection with the adoption proceeding.

4 (3) One copy of the petition must be retained by the court. A copy must be sent to:

5 (a) the department or to the agency participating in the adoption proceeding; ~~and~~ OR

6 (b) the parent placing the child for adoption in a direct parental placement adoption.

7
8 **NEW SECTION. Section 127. Time for action on petition for adoption -- waiver.** Not less than 6
9 months from the date the child has been placed with the prospective adoptive parent, the prospective
10 adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are
11 served, THEN PURSUANT TO [SECTIONS 108 AND 117], the court may waive the 6-month postplacement
12 evaluation period and summarily consider an adoption petition.

13
14 **NEW SECTION. Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption,
15 notice of hearing must be served on:

16 (a) a person whose consent to adoption is required under [section 39];

17 (b) the department or agency whose consent to adoption is required;

18 (c) the spouse of the petitioner if the spouse has not joined in the petition;

19 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
20 relinquishment set aside; and

21 (e) any other person named by the court to receive notice.

22 (2) The notice must direct the person to appear in court at the time specified and to show cause
23 why the petition should not be granted.

24 (3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
25 Procedure.

26 (4) A notice of hearing is not required to be served on any party:

27 (a) whose parental rights have been terminated in prior proceedings;

28 (b) who waives notice in a relinquishment, consent, or other document signed by the party;

29 (c) who has consented in writing to an adoption; or

30 (d) whose consent to adoption is not required under [section 40].

1 **NEW SECTION. Section 129. Content of notice.** The notice required by [section 128] must
2 contain:

- 3 (1) the caption of the petition;
4 (2) the address and telephone number of the court in which the petition is pending;
5 (3) a concise summary of the relief requested in the petition;
6 (4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney;
7 and
8 (5) a statement of the method of responding to the notice and the consequences of failure to
9 respond.

10

11 **NEW SECTION. Section 130. Hearing on petition for adoption.** (1) The petitioners and the child
12 shall appear at the hearing unless the presence of the child is waived by the court.

13 (2) The court shall examine the petition, the documents accompanying the petition, and the
14 petitioners and shall receive evidence in support of the petition.

15

16 **NEW SECTION. Section 131. Granting petition for adoption -- denial of petition.** (1) The court
17 shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence
18 received if it determines that:

19 (a) the child has been in the physical custody of the petitioners for at least 6 months, unless the
20 court for good cause shown waives this requirement pursuant to [section 108 or 117];

21 (b) notice of hearing on the petition for adoption was properly served or dispensed with;

22 (c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating
23 parental rights has been obtained and filed with the court;

24 (d) any evaluation required by [sections 1 through 156] has been filed with and considered by the
25 court; and

26 (e) the adoption is in the best interests of the child.

27 (2) If the petition for adoption is denied, the court shall dismiss the petition and enter an
28 appropriate order as to the future custody of the child according to the best interests of the child.

29

30 **NEW SECTION. Section 132. Best interests of child.** (1) In determining whether to grant a

petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

(a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;

(b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;

(c) the harm that could result to the child from a change in placement;

(d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

(e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., have been met.

NEW SECTION. Section 133. Removal of child from state. Before a decree of adoption is issued, a petitioner may not remove the child from the state for more than 30 consecutive days without the permission of:

(1) the court if the child was placed directly for adoption; or

(2) the department or the agency that placed the child for adoption.

NEW SECTION. Section 134. Decree of adoption. A decree of adoption must state:

(1) the original name of the child;

(2) the name of the petitioner for adoption;

(3) whether the petitioner is married or unmarried;

(4) whether the petitioner is a stepparent of the child;

(5) the name by which the child is to be known;

(6) **FOR A CHILD BORN IN MONTANA,** a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

- 1 (7) the child's date and place of birth, if known;
2 (8) the effect of the decree of adoption as stated in [section 136];
3 (9) that the adoption is in the best interests of the child; and
4 (10) whether the birth mother objects to the release of the original birth certificate information upon
5 the adoptee reaching 18 years of age.

6

7 **NEW SECTION. Section 135. Communication of decree to department.** (1) Within 30 days after
8 a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

9 (2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new
10 birth certificate to the child.

11

12 **NEW SECTION. Section 136. Effect of decree.** (1) After the decree of adoption is entered:

13 (a) the relationship of parent and child and all the rights, duties, and other legal consequences of
14 the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the
15 adoptive parent;

16 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the
17 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
18 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
19 support.

20 ~~(2) A decree of adoption is not subject to a challenge after the decree is issued.~~

21 ~~(3)(2)~~ (2) A decree of adoption should include a notice to the vital statistics bureau as to the birth
22 mother's consent to release of the information on the original birth certificate upon the adoptee reaching
23 18 years of age.

24 ~~(4)(3)~~ (3) The relationship of parent and child for the purposes of intestate succession is governed by
25 Title 72.

26

27 **NEW SECTION. Section 137. Finality of decree -- expediency.** (1) For purposes of appeal, the
28 decree of adoption is a final order when it is issued.

29 (2) A person may appeal from the order in the manner and form provided for appeals from a
30 judgment in civil actions.

(3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions of [section 78].

NEW SECTION. Section 138. Rights of adoptee. A decree of adoption does not affect any right or benefit vested in the adoptee before the decree became final.

NEW SECTION. Section 139. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or country, the rights and obligations of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections 1 through 156].

NEW SECTION. Section 140. Visitation and communication agreements. (1) Except as otherwise provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral agreement for contact or communication between the adoptee and the birth parents or family.

(2) Any express written agreement entered into between the placing parent and the prospective adoptive parent after the execution of a relinquishment and consent to adoption is independent of the adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the agreement for contact or communication is later performed. Failure to perform an agreement is not grounds for setting aside an adoption decree.

(3) A court may order that an agreement for contact or communication entered into under this section may not be enforced upon a finding that:

- (a) enforcement is detrimental to the child;
- (b) enforcement undermines the adoptive parent's parental authority; or
- (c) due to a change in circumstances, compliance with the agreement would be unduly burdensome to one or more of the parties.

NEW SECTION. Section 141. Confidentiality of records and proceedings. (1) Unless the court orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption must be kept as a permanent record of the

- 1 court and must be withheld from inspection. A person may not have access to the records, except:
- 2 (a) for good cause shown on order of the judge of the court in which the decree of adoption was
- 3 entered;
- 4 (b) as provided in [sections 141 through 146];
- 5 (c) as provided in 50-15-121 and 50-15-122; OR
- 6 (D) THE DEPARTMENT'S CHILD SUPPORT ENFORCEMENT DIVISION PROVIDING SERVICES
- 7 UNDER 42 U.S.C. 651, ET SEQ.

8 (3) All files and records pertaining to adoption proceedings retained by the department, a licensed

9 child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from

10 inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

11

12 **NEW SECTION. Section 142. Disclosure of records -- nonidentifying information -- consensual**

13 **release.** (1) The department or authorized person or agency may disclose:

- 14 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family
- 15 member of an adoptee or birth parent; and
- 16 (b) identifying information to a court-appointed confidential intermediary upon order of the court
- 17 or as provided in 50-15-121 and 50-15-122.

18 (2) Information may be disclosed to any person who consents in writing to the release of

19 confidential information to other interested persons who have also consented. Identifying information

20 pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a

21 consensual exchange of information unless the adoptee's adoptive parent consents in writing.

22

23 **NEW SECTION. Section 143. Petition for appointment of confidential intermediary.** (1) An adult

24 adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent

25 may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth

26 parent, or an extended family member.

- 27 (2) A petition for disclosure must contain:
- 28 (a) as much of the following information as is known by the petitioner:
- 29 (i) the name, address, and identification of the petitioner;
- 30 (ii) the date of the adoptee's birth;

1 (iii) the county and state where the adoption occurred;

2 (iv) the date of the adoption; and

3 (v) any other information known to the petitioner concerning the birth parents, the adoptive parent,
4 and the adoptee that could assist in locating the person being sought;

5 (b) written documentation from a certified confidential intermediary agreeing to conduct the search;
6 and

7 (c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the
8 appointment of a confidential intermediary.

9
10 **NEW SECTION. Section 144. Appointment of confidential intermediary -- duties -- payment.** (1)

11 After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential
12 intermediary who shall:

13 (a) conduct a confidential search for the person sought as requested in the petition for disclosure;

14 (b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless
15 ordered to do so by the court; and

16 (c) make a written report of the results of the search to the court not later than 6 months after
17 appointment.

18 (2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual
19 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

20 (3) A confidential intermediary may inspect otherwise confidential records of the court, the
21 department, or an authorized agency for use in the search. The confidential intermediary may not disclose
22 identifying information from the records or any results of a search unless authorized by the court or unless
23 the parties have executed written consent to the confidential intermediary. Nonidentifying information from
24 any source may be disclosed without further order from the court.

25 (4) If a confidential intermediary locates the person being sought, a confidential inquiry must be
26 made as to whether the located person consents to having that person's present identity disclosed to the
27 petitioner. The court may request that the confidential intermediary assist in arranging contact between the
28 petitioner and the located person.

29 (5) If a confidential intermediary locates the person being sought and the located person does not
30 consent to having that person's identity disclosed, identifying information regarding that person may be

1 disclosed only upon order of the court for good cause shown.

2 (6) If the person being sought is found to be deceased, the court may order disclosure of identifying
3 information regarding the deceased to the petitioner.

4

5 **NEW SECTION. Section 145. Disclosure authorized in course of employment.** [Sections 1 through
6 156] do not preclude an employee or agent of a court, department, or agency from:

7 (1) inspecting permanent, confidential, or sealed records for the purpose of discharging any
8 obligation under [sections 1 through 156];

9 (2) disclosing the name of the court in which a proceeding for adoption occurred or the name of
10 an agency that placed an adoptee to an individual described in [section 143(1)] who can verify the
11 individual's identity; or

12 (3) disclosing nonidentifying information contained in confidential or sealed records in accordance
13 with any other applicable state or federal law.

14

15 **NEW SECTION. Section 146. Release of original birth certificate -- certificate of adoption.** (1) For
16 a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate
17 authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall
18 furnish a copy of the original birth certificate upon the written request of an adoptee.

19 (2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy
20 of an adoptee's original birth certificate authorized for release by a court order issued pursuant to
21 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court
22 order.

23 (3) For a person adopted on or after [the effective date of this section], in addition to any copy of
24 an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121
25 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

26 (a) the written request of an adoptee who has attained 18 years of age unless the birth parent has
27 requested in writing that the original birth certificate not be automatically released; or

28 (b) a court order.

29 (4) For a person adopted on or after [the effective date of this section] and subject to subsection

30 (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, ~~the clerk of~~

~~the court that entered a decree of adoption~~ THE DEPARTMENT shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

NEW SECTION. Section 147. Fees related to placement for adoption by parent. (1) Reasonable adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must relate to:

- (a) a petition for adoption;
- (b) placement of a child;
- (c) medical care or services;
- (d) prenatal care;
- (e) foster care;
- (f) a preplacement evaluation;
- (g) counseling related to providing information necessary to make an informed decision to voluntarily relinquish a child;
- (h) travel or temporary living costs for the birth mother;
- (i) legal fees incurred for services on behalf of the placing parent;
- (j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to document the disclosures of medical and social history required by [section 81]; and
- (k) other reasonable costs related to adoption that do not include education, vehicles, salary or wages, vacations, or permanent housing for the birth parent.

(2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a payment authorized by subsection (1). The payment may not be made contingent on the placement of a child for adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not completed, a person who is authorized by subsection (1) to make a specific payment is not liable for that payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to make the payment regardless of the outcome of the proceeding for adoption.

1 **NEW SECTION. Section 148. Limitations on payment of counseling and legal fees.** (1) A
2 prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

3 (2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for
4 one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to
5 legal counsel paid by the prospective adoptive parent continues only until the relinquishment becomes
6 irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

7
8 **NEW SECTION. Section 149. Prohibited activities -- violations -- penalties.** (1) A person, other
9 than the department or a licensed child-placing agency, may not:

10 (a) advertise in any public medium that the person:

11 (i) knows of a child who is available for adoption; or

12 (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child;

13 or

14 (b) engage in placement activities as defined in [section 151].

15 (2) An individual other than an extended family member or stepparent of a child may not obtain
16 legal or physical custody of a child for purposes of adoption unless the individual has a favorable
17 preplacement evaluation or a court-ordered waiver of the evaluation.

18 (3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a
19 child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person,
20 either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense
21 of paying or charging excessive adoption process fees.

22 (4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under
23 [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this
24 section are considered a gift to the birth parent.

25 (5) A person convicted of the offense of paying or charging excessive adoption process fees,
26 attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1
27 through 156] may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city
28 or county attorney. The court may also enjoin from further violations any person who violates [sections
29 1 through 156].
30

1 **NEW SECTION. Section 150. Action by department.** The department may review and investigate
2 compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

3
4 **NEW SECTION. Section 151. Definitions.** As used in [sections 151 through 156], the following
5 definitions apply:

6 (1) "Person" includes any individual, partnership, voluntary association, or corporation.

7 (2) "Placement activities" means any of the following:

8 (a) placement of a child for adoption;

9 (b) arranging or providing short-term foster care for a child pending an adoptive placement; or

10 (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective
11 adoptive parents.

12 (3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly
13 through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent
14 or parents, or placement of a child by a birth parent.

15
16 **NEW SECTION. Section 152. General duties of department.** The department shall:

17 (1) issue licenses to entities engaged in child placement activities on [the effective date of this
18 section] if the licensed applicant has met the requirements established by the department by rule;

19 (2) prescribe the conditions upon which child-placing licenses are issued and revoked; and

20 (3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the
21 welfare of children.

22
23 **NEW SECTION. Section 153. License required -- term of license -- no fee charged.** (1) Only an
24 entity holding a current child-placing agency license issued by the department may act as an agency for
25 the purpose of:

26 (a) procuring or selecting proposed adoptive homes;

27 (b) placing children in proposed adoptive homes;

28 (c) soliciting persons to adopt children or arranging for persons to adopt children;

29 (d) soliciting persons to relinquish children or place children in potential adoptive homes; or

30 (e) engaging in placement activities.

(2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

NEW SECTION. Section 154. Requirements for licensure. The department may issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency or a specific program within the agency must be the care and placement of children.

(2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

(3) The agency meets the requirements as designated by the department by rule.

(4) The directing or managing personnel of the agency must be qualified both on the basis of professional educational experience and character.

(5) Complete records must be kept of both the children and adopting parents with which the agency deals, and the records must be maintained in accordance with [section 141].

(6) The agency shall maintain and use an in-state office for making a social study of the child and proposed adoptive parent before placement of the child, particularly with regard to:

(a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare; and

(b) the physical and mental condition of the child and the child's family background.

(7) The agency must have the ability to provide education for adoptive parents and counseling for placing parents as required in [section 48] and department rules.

(8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with other public agencies having to deal with the welfare of children.

(9) The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year.

NEW SECTION. Section 155. Investigation of agencies -- cancellation of licenses. (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by [section 154(9)] or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency.

NEW SECTION. Section 156. Violation a misdemeanor -- penalty. (1) Any person who maintains or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction of a first offense shall be punished by a fine not exceeding \$1,000 or imprisonment for up to 1 year in jail and shall be enjoined from further engaging in agency activities.

(2) Upon the second conviction of a person for violation of [sections 153 through 155], the person is guilty of a felony and may be punished by a fine not exceeding \$10,000 or imprisonment for up to 5 years in prison and shall be enjoined from further engaging in agency activities.

Section 157. Section 2-6-104, MCA, is amended to read:

"2-6-104. Records of officers open to public inspection. Except as provided in ~~40-8-126 and 27-18-111~~ and [section 141], the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person."

Section 158. Section 2-18-606, MCA, is amended to read:

"2-18-606. Parental leave for state employees. (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or placement of a child, for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103 33-22-130.~~"

Section 159. Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
2 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
3 without the need for a biennial legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
5 with both of the following provisions:

6 (a) The law containing the statutory authority must be listed in subsection (3).

7 (b) The law or portion of the law making a statutory appropriation must specifically state that a
8 statutory appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
10 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
11 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
12 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
13 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
14 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
15 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
16 39-71-907; 39-71-2321; 39-71-2504; [section 16]; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
17 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
18 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
19 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

20 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
21 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
22 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
23 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
24 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
25 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
26 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
27 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
28 July 1, 2001.)"

29

30 **Section 160.** Section 25-1-201, MCA, is amended to read:

1 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
2 following fees:

3 (a) at the commencement of each action or proceeding, except a petition for dissolution of
4 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
5 \$80; for filing a petition for dissolution of marriage, a fee of \$120; and for filing a petition for legal
6 separation, a fee of \$120;

7 (b) from each defendant or respondent, on appearance, \$60;

8 (c) on the entry of judgment, from the prevailing party, \$45;

9 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
10 pages of each file, per request, and 25 cents per additional page;

11 (e) for each certificate, with seal, \$2;

12 (f) for oath and jurat, with seal, \$1;

13 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

14 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
15 the fee for entry of judgment provided for in subsection (1)(c);

16 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

17 (j) for transmission of records or files or transfer of a case to another court, \$5;

18 (k) for filing and entering papers received by transfer from other courts, \$10;

19 (l) for issuing a marriage license, \$30;

20 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
21 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
22 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

23 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
24 of the estate of a nonresident decedent, \$55;

25 (o) for filing a declaration of marriage without solemnization, \$30;

26 (p) for filing a motion for substitution of a judge, \$100;

27 (q) for filing a petition for adoption, \$75.

28 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the
29 district court must be deposited in and credited to the district court fund. If no district court fund exists,
30 that portion of the fees must be deposited in the general fund for district court operations. The remaining

1 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

2 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
3 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
4 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
5 deposited as provided in 19-5-404.

6 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
7 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
8 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
9 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
10 be deposited in the general fund for district court operations.

11 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
12 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
13 deduct from the following fees the amounts indicated:

14 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
15 provided in subsection (1)(a), \$35;

16 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

17 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

18 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
19 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
20 provided in subsection (1)(m), \$15.

21 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
22 county general fund for district court operations unless the county has a district court fund. If the county
23 has a district court fund, the money must be deposited in that fund.

24 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
25 remitted to the state to be deposited as provided in 19-5-404.

26 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
27 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

28 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
29 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
30 judicial salaries.

(9) The clerk of district court shall remit to the credit of the special revenue account established in [section 16] \$70 of the filing fee required in subsection (1)(q), AND \$5 OF THE FILING FEE MUST BE DEPOSITED IN THE DISTRICT COURT FUND. IF NO DISTRICT COURT FUND EXISTS, FEES MUST BE DEPOSITED IN THE GENERAL FUND FOR DISTRICT COURT OPERATIONS."

Section 161. Section 33-22-130, MCA, is amended to read:

"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1)

Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ the transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the child."

Section 162. Section 33-30-1016, MCA, is amended to read:

"33-30-1016. Coverage for adopted children from time of placement -- preexisting conditions. (1)

Each individual or group membership contract issued or amended by a health service corporation in this state that provides coverage of dependent children of a member must provide coverage for an adopted child of the member to the same extent as for natural children of the member.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined in 40-8-103 33-22-130."

1 **Section 163.** Section 33-31-114, MCA, is amended to read:

2 **"33-31-114. Coverage for adopted children from time of placement -- preexisting conditions.** (1)

3 Each health maintenance contract regulated under this chapter must provide coverage for an adopted child
4 of the enrollee to the same extent as for natural children of the enrollee.

5 (2) The coverage required by this section must be effective from the date of placement for the
6 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
7 child is removed from placement. Coverage at the time of placement must include the necessary care and
8 treatment of medical conditions existing prior to the date of placement.

9 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
10 in ~~40-8-103~~ 33-22-130."

11

12 **Section 164.** Section 37-60-301, MCA, is amended to read:

13 **"37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person
14 to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary
15 security organization, a private investigator, or a private security guard without having first obtained a
16 license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status
17 and shall renew their licenses on the renewal date as prescribed by the department.

18 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
19 the person is licensed as a private investigator, a contract security company, a proprietary security
20 organization, or a private security guard.

21 (3) A person appointed by the court as a confidential intermediary under [section 144] is not
22 required to be licensed under this chapter. A person who is licensed under this chapter is not authorized
23 to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section
24 144].

25 ~~(3)(4)~~ (4) A person who knowingly engages an unlicensed private investigator, private security guard,
26 or contract security company is guilty of a misdemeanor punishable under 37-60-411."

27

28 **Section 165.** Section 40-6-108, MCA, is amended to read:

29 **"40-6-108. Statute of limitations.** (1) An action may be commenced at any time for the purpose
30 of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection~~

1 ~~(a), (b), or (c)~~ of 40-6-105(1)(a), (1)(b), or (1)(c).

2 (2) After the presumption has been rebutted, paternity of the child by another ~~man~~ individual may
3 be determined in the same action if the other ~~man~~ individual has been made a party.

4 (3) An action to determine the existence or nonexistence of the father and child relationship as to
5 a child who has no presumed father under 40-6-105:

6 (a) may not be brought by the child later than 2 years after the child attains the age of majority;

7 (b) may be brought by a state agency at any time after the first application is made under Title IV-D
8 of the Social Security Act for services to the child and before the child attains the age of majority. This
9 subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a
10 paternity action was barred or could have been barred by a shorter limitation period. However, in previously
11 barred actions that are revived by this subsection, the father is not liable to the state agency for support
12 of the child.

13 (4) The father's liability for a statutory debt created by the payment of public assistance is limited
14 to the amount of assistance paid during the 2-year period preceding commencement of the action. This
15 subsection does not limit the subsequent accrual of a statutory debt.

16 (5) Section 40-6-107 and this section do not extend the time within which a right of inheritance
17 or a right to a succession may be asserted beyond the time provided by law relating to distribution and
18 closing of decedents' estates or to the determination of heirship or otherwise.

19 (6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ sections 1 through
20 156, a further action to declare the existence or nonexistence of the father and child relationship of the
21 adopted child may not be commenced, except as provided in 40-8-112."

22

23 **Section 166.** Section 41-3-609, MCA, is amended to read:

24 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
25 relationship upon a finding that any of the following circumstances exist:

26 (a) the parents have relinquished the child pursuant to ~~40-6-135~~ sections 43 and 51;

27 (b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

28 (c) the child is an adjudicated youth in need of care and both of the following exist:

29 (i) an appropriate treatment plan that has been approved by the court has not been complied with
30 by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication."

Section 167. Section 41-5-603, MCA, is amended to read:

"41-5-603. Youth court and department records. (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

(2) Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

(i) persons allowed access to the records under 45-5-624(7); and

1 (i) persons allowed access under [section 85].

2 (3) Any part of records information secured from records listed in subsection (2), when presented
3 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
4 for the parties to the proceedings.

5 (4) After youth court and department records, reports of preliminary inquiries, predispositional
6 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
7 order of the youth court, for good cause to:

8 (a) those persons and agencies listed in subsection (2); and

9 (b) adult probation professional staff preparing a presentence report on a youth who has reached
10 the age of majority."

11

12 **Section 168.** Section 41-5-604, MCA, is amended to read:

13 **"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court
14 records and law enforcement records pertaining to a youth covered by this chapter must be physically
15 sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is
16 committed.

17 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
18 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed
19 upon termination of the extended jurisdiction.

20 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an
21 agency or department that has in its possession copies of the sealed records shall also seal or destroy the
22 copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

23 (4) This section does not prohibit the destruction of records with the consent of the youth court
24 judge or county attorney after 10 years from the date of sealing.

25 (5) The requirements for sealed records in this section do not apply to fingerprints, DNA records,
26 photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
27 of the court's judgment or disposition, or records referred to in 45-5-624(7) or [section 85]."

28

29 **Section 169.** Section 50-15-223, MCA, is amended to read:

30 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**

1 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born
2 in this state when the department receives the following:

3 (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed
4 in accordance with the laws of another state or foreign country, or a certified copy of the decree of
5 adoption, together with the information necessary to identify the original certificate of birth and to establish
6 a new certificate of birth; or

7 (b) a request that a new certificate be established if the request shows that:

8 (i) a district court has determined the paternity of the person; or

9 (ii) both parents have acknowledged the paternity of the person and request that the surname be
10 changed from that shown on the original certificate.

11 (2) The date of birth and the city and county of birth must be stated in the newly established
12 certificate of birth. The department shall substitute the new certificate of birth for the original certificate
13 of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court
14 determination of paternity, or paternity acknowledgment ~~may not be~~ are only subject to inspection, except
15 upon order of a district court, as provided by rule, as provided in [sections 141 through 146], or as
16 otherwise provided by state law.

17 (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the
18 certificate of birth as provided in rules adopted by the department.

19 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
20 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
21 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
22 except upon order of a district court or as provided by rule adopted by the department.

23 (5) Upon written request of both parents and receipt of a sworn acknowledgment and other
24 credible evidence of paternity signed by both parents of a child born outside of marriage, the department
25 shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate
26 of birth.

27 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth
28 is to be established under this section and the date and place of birth have not been determined in the
29 adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with
30 the department, as provided in 50-15-204, before a new certificate of birth may be established. The new

1 certificate of birth must be prepared on a form prescribed by the department.

2 (7) When a new certificate of birth is established by the department, the department may direct
3 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
4 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

5 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
6 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
7 States and who was adopted through a district court in this state.

8 (b) The certificate of birth must be established by the department upon receipt of a certificate of
9 adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of
10 adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate
11 of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or
12 older.

13 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual
14 country of birth. A statement must be included on the certificate indicating that it is not evidence of United
15 States citizenship for the child for whom it is issued.

16 (d) After registration of the certificate of birth in the new name of the adopted person, the
17 department shall seal and file the certificate of adoption, which is not subject to inspection, except upon
18 order of the district court, as provided by rule, or as otherwise provided by state law.

19 (9) The department may promulgate rules necessary to implement this section."
20

21 **Section 170.** Section 52-2-505, MCA, is amended to read:

22 **"52-2-505. Records to be confidential.** All records regarding subsidized adoption are confidential
23 and may be disclosed only in accordance with the provisions of ~~40-8-126~~ [section 141]."
24

25 **NEW SECTION. Section 171. Repealer.** Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128,
26 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107,
27 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117,
28 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136,
29 40-8-201, and 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407,
30 MCA, are repealed.

NEW SECTION. Section 172. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 173. Applicability. (1) [Sections 1 through 156] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997.

NEW SECTION. Section 174. Code commissioner instructions. The code commissioner shall renumber ~~Title 41, chapter 4, and Title 52, chapter 2, parts 4 and PART 5~~ as an integral part of [sections 1 through 156] and make any changes necessary to reflect the renumbering. The entire body of material must be codified as Title 42.

NEW SECTION. Section 175. Termination. [Sections 27, 59, 64, 66, ~~68~~ 69, and 74] terminate October 1, 1998.

NEW SECTION. Section 176. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

NEW SECTION. Section 177. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Sections 19 through 26, 28 through 38, 60, 65, 67, 69, and 75] are effective October 1, 1998.

-END-

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By SEN. RIC HOLDEN in the absence of CHAIRMAN BRUCE CRIPPEN AND VICE CHAIRMAN LORENTS GROSFIELD, on April 7, 1997, at 9:37 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: Sen. Bruce D. Crippen, Chairman (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 163; Posted 4/4/97
Executive Action: HB 100 BE CONCURRED IN AA

EXECUTIVE ACTION ON HB 100

Amendments: Valencia Lane explained when HB 100 was first heard, Amendments HB010004.ASF (**EXHIBIT 1**) were adopted; however, HB 559 had already been sent to the Governor and it was necessary to coordinate HB 100 with HB 559. She said Susan Fox, Legislative Services Division, and Brenda Nordlund, Department of Justice, had new Amendments HB0100005.ASF (**EXHIBIT 1**) which were substantively the same as those adopted in the HB010004.ASF amendments. Ms. Lane requested the 010004 Amendment be stripped and the 010005 be added to HB 100 and reminded the Committee substantively they were the same but procedurally they created a new section of law as opposed to amending an existing section -- it was believed to be a better and cleaner way to do it.

care of the problem. He stated he didn't think it was necessary to make further changes in order to accomplish what was intended.

SEN. BARTLETT asked from where the concept of supervised release came. **Rick Day** said several states with sentencing guidelines used a supervised release period while others had a pure truth in sentencing approach; Montana used a form of supervised release.

SEN. BARTLETT asked if this was the Department's first attempt to initiate a guidelines system of sentencing in Montana. **Rick Day** said it wasn't; it was the Department's intent the bill clarify what was provided for by imprisonment under current statute, to bring down the total exposure to the system from ten to five years, to provide a real truth in sentencing so what was imposed was actually what the offender got.

SEN. BARTLETT asked how that would differ from a guidelines system. **Mr. Day** said a guidelines system had a structured grid through which a large variety of penalties set; much more, this was a direct approach to a particular law.

Vote: Motion HB 100 AS AMENDED BE CONCURRED IN CARRIED 7-3 ON A ROLL CALL VOTE. **SEN. B.F. "CHRIS" CHRISTIAENS** will carry HB 100.

{Tape: 1; Side: A; Approx. Time Count: 10:15 a.m.}

HEARING ON HB 163

Sponsor: REP. JOHN JOHNSON, HD 2, Glendive

Proponents: Hank Hudson, DPHHS
Ann Gilkey, DPHHS
Sharon Hoff, Montana Catholic Conference
Kimberly Kradolfer, Private Citizen
Marilyn McKibben, Catholic Social Services
REP. TRUDI SCHMIDT, HD 42, Lutheran Social Services
Mark Ricks, LDS Social Services

Opponents: None

Opening Statement by Sponsor:

REP. JOHN JOHNSON, HD 2, Glendive, said the 1995 Legislature, through SB 150, directed the DPHHS to conduct a study regarding adoption laws. The volunteer committee, consisting of the Catholic Social Services director, Lutheran Social Services director, the LDS Social Services director, an adoptive parent, an adoptee, an attorney from DPHHS, DPHHS program director and an attorney in private practice, met over 20 times to form the legislation in HB 163. He said HB 163 revised and reorganized current Montana statutes from throughout the code so persons involved in different types of adoptions knew how to proceed; however, it retained the types of adoptions currently allowed under current Montana law, i.e. direct parental placement,

licensed child-placing agency, step parent, Department adoption and adoption of adults. **REP. JOHNSON** said HB 163 provided for balance for all parties' rights and greater protection than current law, was the result of two years' work by a voluntary task force and was thoroughly reviewed by the House Subcommittee which was assigned to review the bill.

He stated the premise of HB 163 was every child had the right to be cared for and supported by parents who were willing to provide consistent care, either by the birth parents or adoptive parents, both of whom were willing to assume responsibility for the child. Birth parents' rights to a child should be protected when the parents were willing to take the responsibility for the care and support of the child. Those rights should not be terminated unless they were done voluntarily after appropriate counseling was offered, or upon waiver of parental rights, or a failure to establish a parent-child relationship or upon judicial finding of unfitness. **REP. JOHNSON** said the State of Montana had an interest in promoting the stability and finality in adoption and adoptive parents had an interest in not having an adoption disrupted and a child displaced. He urged favorable support of HB 163.

Proponents' Testimony:

Hank Hudson, DPHHS, Child & Family Services Division, said they supported the bill during the 1995 Legislative Session which created the committee and called for the study of the adoption laws. He echoed what **REP. JOHNSON** said in that a great deal of work had been done by a committee, composed of a balanced group of people, to produce HB 163. He said one of the first things the committee noticed was the adoption laws were not ordered in a way to be easily understood, nor were they located together; in fact, in a couple of instances the references were conflicting and confusing. Therefore, the bill was a reordering and consolidation of laws, which should be more useful to attorneys and understandable for family members or agency people.

Mr. Hudson said one of the problematic issues addressed in HB 163 was how to deal with rights of fathers whose whereabouts weren't known or who weren't participating in the parenting process. He explained they wanted to ensure the rights of the putative fathers were respected, yet they didn't want to hold adoptions hostage or delay them. He said the Putative Father Registry balanced those rights but still allowed the proceeding of timely and permanent adoptive arrangements.

Mr. Hudson explained some of the things HB 163 did was consolidate the standards for the termination of parental rights, establish the methods which would be used to protect the rights of birth parents, address the way in which challenges could be made to adoptions and ensure the best interests of the child by guaranteeing the challenges were handled in a timely manner, prohibit "baby brokering" (adoption arrangements made by

unlicensed organizations) and support openness to the extent all parties agreed upon.

Ann Gilkey, DPHHS, distributed copies of her written testimony (**EXHIBIT 2**) but said she wanted to veer from it because much of it had already been said; therefore, she wanted to inform the Committee of the process involved from the original hearing to the bill as it appeared before them. She said a House Subcommittee was formed after a two-hour hearing with no opponents; however, HB 163 was tabled for two months while the Subcommittee met. The reason the Subcommittee met was they had some concerns, one of which was the understanding the bill was all new law; however, it wasn't.

{Tape: 1; Side: B; Approx. Time Count: 10:24 a.m.}

She said existing law both in Montana and nationally had been upheld repeatedly by the U.S. Supreme Court that all individuals had a right to privacy and a woman could not be forced to name a father of a child; therefore, the committee's struggle was to encourage the disclosure of identifying information of the birth father. **Ms. Gilkey** explained HB 163 gave the putative father more rights than existing law and defined him as a man who was not married to the mother of the child. In those situations, the Putative Father Registry would allow him, if he wanted to take responsibility for that child, to send notice to the Bureau of Vital Statistics; thereby, he would be entitled to any right of proceeding to terminate his parental rights. The Subcommittee added he would be entitled to know if he was on the child's birth certificate, if he was adjudicated as the father for child support or if he was living with the child or child's mother.

She said one of the concerns of the Subcommittee was (and it was true) that if he didn't know the mother was pregnant and didn't sign up at the Registry, he lost his rights to the child because the primary focus of HB 163 was the stability for the child through finality of the adoption process. **Ms. Gilkey** explained they hoped, through HB 163, to give the putative father more protection through encouraging him to sign up at the Bureau of Vital Statistics for his rights, even if he wasn't sure the woman was pregnant. She stressed that wasn't currently possible because the Registry didn't exist.

Ms. Gilkey addressed another area of Subcommittee concern, and that was release of records and explained after its effective date, HB 163 would allow the adopted child, after age 18, to get the original birth certificate just by asking for it. She said currently the release had to be a court order, but many judges issued them. She noted this was a national as well as international trend; in fact, the United States was one of the few countries which still had closed records. She said HB 163 was a compromise because it would allow a child who was adopted under existing laws to stay under them; also, before the child reached 18 years of age, the birth mother could notify the Bureau

of Vital Statistics to not release the original birth certificate.

Linda Fagenstrom, Lutheran Social Services of Montana, supplied her written testimony, though she couldn't attend in person. (EXHIBIT 3)

Darcy M. Crum, Private Attorney, supplied her written testimony, though she couldn't attend in person. (EXHIBIT 4)

Sharon Hoff, Montana Catholic Conference, said they totally supported HB 163, noting there had been some concern about the Registry; however, she encouraged continued support of it because it was a real benefit for the alleged father if he made the effort to register. She said one reason they were involved in public policy work was they believed so strongly in life issues, explaining it was important to them to say, "No abortion," as well as to say, "When a child is born, there is a whole life there and we need to journey with that child and adult into old age"; therefore, life from beginning to end was very sacred to them. **Ms. Hoff** reminded the Committee many people had their fingerprints on the bill and she encouraged their support.

Kimberly Kradolfer, Private Citizen, said she was an adoptive parent as well as a member of the committee which studied the adoption laws. She urged the Judiciary Committee's support of the bill because it was balanced and didn't reflect the position of any individual; rather, the positions were a result of compromise. She maintained the bill protected the rights of all parties and provided stability for the child.

Marilyn McKibben, Catholic Social Services, said they felt HB 163 contained many improvements over existing adoption laws in Montana. She said her agency had been providing adoption services since the 1950's, had counseled approximately 3,200 pregnant women and teens and had been involved in the adoption of approximately 1,700 children. **Ms. McKibben** stated their focus was the best interest of children, or balancing rights and responsibilities of parents as well as adoptive parents. She said the most compelling aspect of HB 163 was its fairness, even to the extent of being sensitive to the vulnerability of all parties while safeguarding the integrity of the adoption process. She contended no set of laws could possibly meet all circumstances but the scope of HB 163 was wide enough to accommodate even the most unusual circumstance. She said in some ways, HB 163 made the adoption requirements more easily accomplished without disregarding the rights of anyone concerned. Also, it clarified some confusing areas of existing law and established exact procedures. **Ms. McKibben** encouraged the bill's passage because it would serve as a balanced, broad-based, sensitive and fair law to protect the interests of all Montana citizens. She addressed the Putative Father Registry and said current law made dealing with the rights of the putative father very difficult if the birth mother was serious about choosing

adoption because sometimes he was married to someone else or there could be a possibility of multiple birth fathers. She said putting some of the responsibility onto the possible father seemed a reasonable thing to do, explaining HB 163 took into consideration the birth father's circumstances but didn't give him the right to block the adoption process just because he was angry or trying to get even with the birth mother, or felt the government or world was trying to take his other rights away; therefore, he would hang onto the rights at all cost even though he had no intention of caring for or supporting the child.

Ms. McKibben said if a birth mother was forced to parent a child even if she was neither prepared to nor wanted to because the birth father(s) didn't cooperate, it would be very difficult; also, to expect the birth mother to be responsible for finding and notifying the birth father was not a reasonable expectation. The putative father could simply register and protect his own rights through the Putative Father Registry.

REP. TRUDI SCHMIDT, HD 42, Great Falls, said she worked at Lutheran Social Services for over 14 years as a pregnancy adoption counselor as well as the Great Falls area coordinator and had worked with adoptive parents, had done searches and worked with the adoption process. She said the birth father's rights had always been terminated but the addition of the Putative Father Registry gave protection to the interested birth father and allowed the birth mother to name the birth father who could register in the Registry if he was interested in the possibility of parenting as well as participating in the adoptive process as much as the birth mother. She encouraged the Committee's support because it was a good bill which put all the adoptive statutes into one place in the books.

Mark Ricks, LDS Social Services, reminded the Committee the issue of birth fathers had been addressed in HB 163 and the Registry was most helpful because in many ways, the birth father was an obstacle to the birth mother if she was making plans for adoption. He said many times, because of the birth father's disappearance, control or unwillingness to cooperate, the mother was left alone to raise the child as a single parent, or many times the birth mother's parents raised the child. He said they felt the birth fathers should come forward to take the responsibility, which was demonstrated in HB 163.

He stated the bill provided rights and privacy for birth parents who wished confidentiality and had high representation for the interest of the child. He urged the Committee's support.

Opponents' Testimony: None.

{Tape: 1; Side: B; Approx. Time Count: 10:45 a.m.}

Questions From Committee Members and Responses:

SEN. SHARON ESTRADA asked if the father's rights were taken away if he wasn't in the Registry but showed up, maybe three, four or twenty years later. **Ann Gilkey** said if, during this length of time, he didn't know he was the father, he needed to sign up with the Registry within five days of the hearing which would terminate his parental rights. At the hearing, he would have to tell the judge why his rights shouldn't be terminated but and why he should be allowed to parent the child. However, if he didn't do that, his legal rights to the child would be terminated and the adoptive parents would become the legal parents.

SEN. ESTRADA asked if HB 163 hampered an adopted child in searching for his birth father for the purpose of establishing a relationship. **Ms. Gilkey** said the bill didn't address that issue and didn't change what he or she could do under existing law.

SEN. ESTRADA commented if a person was looking for an adopted child or sibling, he or she would have to get a court order to open the case and hire a confidential intermediary who would visit with the individual to determine whether he or she would like to be contacted. She wondered if HB 163 changed that procedure. **Ann Gilkey** said non-identifying information (indirect identification) could be released without a court order. She said the changes were small but helped clarify the confusion on the part of the people implementing the statutes. She said if both parties mutually agreed to be contacted, the information should be shared.

SEN. ESTRADA asked if HB 163 hampered siblings from finding each other if both birth parents were deceased. **Ms. Gilkey** said it wouldn't make it more difficult.

SEN. ESTRADA referred to Page 66, Line 16, of HB 163 and asked why the date of 1967 was chosen. **Ms. Gilkey** said before that date records were opened in Montana; therefore, the committee determined from that date until the effective date of HB 163, actions would have to be made under existing laws.

SEN. ESTRADA asked for affirmation if a sibling born after July 1, 1967, could request a copy of an original birth certificate. **Ann Gilkey** said the adoptee could get the original birth certificate if he or she was born and placed for adoption after the effective date; however, the sibling of the adoptee would not have the same rights to the original birth certificate. **SEN. ESTRADA** asked if the adoptee could request it and **Ms. Gilkey** said he or she could unless the birth mother specifically requested it not be opened.

SEN. STEVE DOHERTY identified Section 13 and Page 61 as the sections which dealt with the Indian Child Welfare Act; he wondered if there any other sections in the bill which dealt with the Act. **Ann Gilkey** said there was one on Page 30, but specific

language from the Act was not included because if it was amended, it would have to be redone.

SEN. DOHERTY commented his experience was the Montana courts and social services seemed to be very aware of the Act; however, in other states there were instances where the Act hadn't been followed. He explained sometimes the child had been placed for one or two years but balancing the best interests of the child with compliance with the Indian Child Welfare Act became very difficult. He wondered if HB 163 was adopted, would early notification be promoted to the tribes so they could comply with the requirements; also, he believed there were instances in some western states where notification wasn't done in order to tip the balance away from the tribes so the children could remain with the placement parents. **Ms. Gilkey** said she hoped references to the federal act in HB 163 would encourage people to notify tribes right up front because it was a whole new political arena for Indian children. Adoptions could be overturned by federal law, thereby not serving anybody's best interests, particularly those of the child if the tribe competed with an adoptive parent for the child.

SEN. REINY JABS asked what happened if two fathers signed the Putative Father Registry and **Ms. Gilkey** said both would receive notice and DNA testing would have to be done to determine the father.

SEN. JABS asked about language that said an unmarried individual who was at least 18 years old could adopt. **Ann Gilkey** said it was existing law which was moved and explained sometimes single people adopted and often it was a situation where the couple divorced but had a foster child for a long time; therefore, one of the persons (usually the mother) wanted the child. She said sometimes a single mother wanted to take a special needs child and they didn't want to prohibit that; however, the policy said the interests and needs of the child should be looked at, so that was used in making the decision as to where the child should go.

SEN. JABS asked what happened if the adoption failed. **Ms. Gilkey** said HB 163 addressed that by saying it depended on the type of adoption and where the child was; in other words, if the agency was involved, the state would resume custody and if it was a private placement the child would return to the birth parent unless the situation was not in the child's best interest. The child would then be placed in another adoptive family.

SEN. SUE BARTLETT asked if the Technical Notes in the fiscal note were addressed in the amendments which were added in the House. **REP. JOHN JOHNSON** said \$75 was the adoption fee petition; \$70 remained with the agency (DPHHS) and the other \$5 with the Clerk of Court in which the petition was filed. **Ms. Gilkey** said the amendment was inserted at the top of Page 8 to ensure the \$70 from the filing fee from the petition for adoption would be used to educate the public during this registry. **SEN. BARTLETT** wanted

to know if the amendment clearly stated the account could be used to fund the Putative Father Registry was told it did.

SEN. MIKE HALLIGAN asked how the revocation of consent had been changed from existing law. **Ann Gilkey** said existing law said the birth mother had to wait at least 72 hours before she could sign rights, but birth fathers were not under the same restriction; however, HB 163 would require them to wait at least three days, just like the birth mother.

SEN. RIC HOLDEN asked where the section on the woman's right to privacy was located and was told Page 6.

SEN. HOLDEN commented the Registry sounded complicated and asked for clarification. **Ann Gilkey** said if the birth father's name wasn't on the birth certificate, was not living with the birth mother, was not paying any child support under any order, but thought or heard the woman may be pregnant, he needed to send notice to the Registry; however, if he didn't register or meet any of the other criteria, his rights would be terminated and he would have the regular appeal time if he found out about the child. **Ms. Gilkey** said if he didn't find out about the child and it was two years old, he could sue the mother civilly for damages.

SEN. HOLDEN asked how a young man would handle the situation if he found out his girlfriend was pregnant. **Ms. Gilkey** said information and instructions would be posted at various places in order to inform the public; in other words, he would take care of it at the local level.

SEN. HOLDEN asked where the section was located which talked about producing records after age 18. **Ms. Gilkey** said Page 66, Section 146.

SEN. HOLDEN asked if the information was given automatically or if the adopted child had to request it. **Ms. Gilkey** said the child would have to request it.

SEN. HOLDEN asked if HB 163 contained statutes which would say who could not adopt a child. **Mr. Gilkey** said Page 4, Section 6, and Page 41, Section 85, covered it, explaining anyone who was going to adopt would be studied by an agency authorized to do home studies and who would recommend if the people were appropriate to adopt; in other words, they would have to meet more than the criteria mentioned.

SEN. HOLDEN commented Section 85 listed the criteria potential adoptive parents had to meet. **Ann Gilkey** said it listed what the adoptive parents' evaluation had to include, so in effect, she agreed with **SEN. HOLDEN**.

{Tape: 2; Side: A; Approx. Time Count: 11:10 a.m.}

SEN. LORENTS GROSFIELD asked if the \$75 was sufficient and **Ann Gilkey** said it was, explaining it was determined \$70 was enough for the education of the public and as for the \$5 for the Clerk and Recorder, currently they usually charged nothing for the petitions for adoption; therefore, they were OK with the \$5.

SEN. GROSFIELD commented the Department would supply the forms used for the Registry and wondered if that wouldn't entail some cost. **Ms. Gilkey** said existing staff would do that, and they thought the biggest expense would be the education campaign for the Registry and the forms. She said there were about 600 petitions for adoption per year, and at \$70 each, it would amount to about \$42,000 per year which should cover what they needed to do.

SEN. GROSFIELD asked about the other \$5 and **Ms. Gilkey** told him the Clerks of Court asked for the amendment to ensure they could put the money into the District Court Fund or the General Fund for their use.

SEN. GROSFIELD asked about the expense of including the notices with license renewals, etc. **Ms. Gilkey** said they had already checked on that and were told if they kept the notice to a certain size, it could be included at no extra cost.

SEN. GROSFIELD commented vehicle registration currently came on a postcard and wondered how the Registry notice could be included, and if the County Treasurers would be forced to reformat the cards to include the notice, significant expense would be involved. **Kim Kradolfer** said if people mailed their vehicle license renewals in, the notices would be included with the return tags and if they paid in person, the forms would be available at the renewal spot.

SEN. MIKE HALLIGAN asked if attorneys could accomplish adoption without involving the Department. **Ms. Gilkey** said they could; it would be a private parental adoption and the mother would select the adoptive family, an attorney would be hired and the process would happen without the Department or agency.

SEN. HALLIGAN asked how relinquishments were handled in that case. **Ms. Gilkey** said [tape too garbled to hear].

SEN. HOLDEN asked referred to Page 41, Section 85, Line 17, and asked about the social history and the obligations of the agency to find responsible parents. **REP. SCHMIDT** said when the adoptive couples applied for adoption, they had to supply three reference letters from friends and pastor or priest, they had to go through checks with police and Child Protective Services, a current medical report, complete a 10-or 11-page adoptive home study which responded to questions the agency asked them to ensure there was no chemical dependency or anything unusual or abnormal. The information would be addressed in an initial visit to the home. If they seemed to qualify at that point, the agency would

meet with them individually in their community; in other words, they have to go through a lot before they're approved. **REP. SCHMIDT** said they then attended a three-day workshop where they spent time with three counsellors to address issues relating to adoption.

SEN. HOLDEN asked if Lutheran Social Services had experienced lawsuits if they turned down an adoptive parent. **REP. SCHMIDT** said they hadn't, explaining the basic problems they had were in the requirements they had to be married at least three years, must be part of a Christian or Catholic congregation or the age limit (it was removed in the last ten years).

SEN. HOLDEN asked about gays or lesbians being allowed to adopt children. **REP. SCHMIDT** said Lutheran Social Services said the adoptive parents had to be a man and woman married couple.

Closing by Sponsor:

REP. JOHN JOHNSON referred to (EXHIBIT 5) and said it explained which statutes were new and which were old. He said it was such a comprehensive bill which dealt with a vital interest to all Montanans, explaining it considered the best interests of the child, detailed how birth certificates might be obtained, had a detailed section on the confidential intermediary and counseling requirements for both adoptive parents and relinquishing parents, described the Indian Child Welfare Act, dealt intrastate and international adoptions, told about the licensing of the agencies and the Putative Father Registry. He urged the Committee's acceptance of HB 163. **REP. JOHN JOHNSON** said **SEN. MIGNON WATERMAN** would carry the bill.

~~Feb 1~~
Feb 2

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES

SENATE JUDICIARY COMMITTEE
COMMIT NO. 2
DATE 4/7/97
BILL NO. HB 163



MARCRACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

OFFICE OF LEGAL AFFAIRS

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April 7, 1997

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
TESTIMONY IN SUPPORT OF HB 163

Submitted by Ann Gilkey

The 1995 Legislature directed the Department to appoint a committee of interested parties to review Montana's adoption statutes, the proposed Uniform Adoption Act (UAA) and the adoption laws of other states to come up with a recommendation for changes to present to this session. A citizen task force consisting of various adoption professionals, attorneys familiar with adoption law and adoption triad members met regularly for the past year and a half. HB 163 is the result of our efforts.

The task force reviewed Montana's statutes and the UAA in depth, as well as statutes from other states. It was concluded that Montana's statutes had both strengths and weaknesses, but needed revision. The proposed legislation repeals all of Montana's existing statutes related to adoption so that the organization of the statutes could be appropriately arranged for clarity. Although most sections are labeled "NEW", many sections of Montana law are in the bill verbatim or with slight modifications. Other provisions were borrowed from the UAA and other states or drafted to fit an identified need.

The bill draft was circulated to hundreds of parties, including judges, clerks of court, adoptees, birth family advocates and adoption agencies. The comments we received back were carefully considered and many were incorporated into the bill. Following the hearing in House Judiciary, a subcommittee was appointed to carefully review the bill and concerns of some of the committee members. The result is a compromise bill. Not everyone is completely happy with every aspect of the bill, but all parties can live with this version of the bill. The original intent remains in the amended bill -- namely to balance the rights of all parties in the adoption triad -- the birth parents, the adoptive parents and the child.

The main components of the bill include:

- logical organization of the laws, particularly in regard to direct parental placement adoptions;

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- establishes a putative father registry that will be effective in October 1, 1998;
- protects the vested rights of a parent before rights to a child may be terminated;
- expedites placement and provides timely resolution of placement issues by clearly outlining the duties of the parties;
- prohibits "baby brokering" by unlicensed for-profit agencies; and
- supports openness in adoption to the extent the parties wish to have that option available to them.

Putative Father Registry:

The registry will serve a dual purpose. Fathers who are not married to the child's mother, but who wish to take responsibility for their child, will receive notice of any proceeding to terminate parental rights to the child if they timely register with the Bureau of Vital Statistics. If the unmarried father does not protect his rights by registering, and is not otherwise entitled to notice, the court may terminate his rights to the child for the purpose of adoption. This will ensure that adoptions are final and can't be overturned at a later date like the now famous "Baby Richard" case.

To educate the public about the registry, the department will place notice of the registry in many public places including hospitals, health department, district court, driver's exam station, and county clerk and recorder. For two years, every notice of vehicle registration renewal will also contain information about the registry.

Voluntary Termination of Parental Rights:

The amended bill expands the provision that a relinquishment may not be executed prior to 72 hours after the child's birth to include the birth father in this time requirement.

The bill sets out in detail the information to be included in a relinquishment in order to prove that it was executed voluntarily and after the birth mother, with counseling, has carefully considered the reasons for and effects of relinquishing.

Direct Parental Placement Adoptions:

Currently, the step by step requirements for perfecting an adoption in a direct parental placement are not set out anywhere. This bill sets them out in detail to provide, in effect, a flowchart of what must happen when.

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The bill also provides a cohesive flow of the steps to follow in department or agency adoptions, stepparent and adult adoptions.

Records:

HB 163 makes minor changes to the current confidential intermediary statutes. It also clarifies when an adoptee may obtain a copy of his/her original birth certificate. The task force originally recommended that birth certificates be available to all adoptees who had reached age 18. After receiving numerous comments on that topic, we amended the bill draft to address whatever expectation of privacy a birth parent may have if she placed her child during a time when original birth certificates were not automatically available.

The current bill draft provides that adoptees born between July 1, 1967 and September 30, 1997, must still rely on the laws in place during that time to gain access to their birth certificate. Adoptees born after the effective date of this Act will have access to their birth certificates at age 18 unless a birth parent specifically notifies the Bureau of Vital Statistics that they do not want the birth certificate automatically released. Adoptees born prior to July 1, 1967 will also have access to their birth certificates because that was the date that the law changed to prohibit automatic release of birth certificates. Persons placing their babies for adoption before July 1, 1967 had no expectation of privacy.

Baby Brokering:

HB 163 clarifies current law on advertising and baby brokering to expressly limit advertising connected with adoptions. Only the department and licensed child placing agencies are allowed to advertise the availability of a child for adoption or the availability of adoptive parents without facing civil and criminal sanctions.

Compliance with other laws:

HB 163 points out that there are other federal and state laws that must be complied with in some adoptions, such as the Indian Child Welfare Act and the Interstate Compact on Placement of Children.

Because of the delayed effective date of the putative father registry, there are several statutes that must remain in effect for a year, until the registry is effective. Those statutes will then automatically be repealed when the Registry becomes law. That is why you will see some sections that seem to be duplicates, but actually reflect differences between current law and the registry.

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1/27/14



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 4/7/97

FILE NO. HB 163

TO: Senator Crippen and the members of the
Senate Judiciary Committee

FROM: Linda Fagenstrom, M.Ed.
Preg/Adoption Program Supervisor
Lutheran Social Services of Montana

RE: HB 163 - Adoption Law Revision

DATE: April 7, 1997

ADMINISTRATION

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I come today to ask you to support HB 163. It has been my privilege since August 1995 to serve as a member of the committee whose task it was to examine the current adoption laws and determine the changes that would make the law work better for the children of Montana. In doing so, the committee drew on the experiences of many different individuals, both adoption professionals and others, to show us where the law was not serving its purpose well. We also reorganized many existing sections in order to make the law more concise and easier to follow. Although there are numerous sections marked as being new, many of them are existing law that has been put in new order.

Of particular concern to those of us who work in adoption, was the creation of a putative father registry system. Approximately 90% of our agency's legal fees are spent trying to locate and serve birthfathers in order to notify them of their legal rights. In addition to this being necessary for adoption under the Uniform Parentage Act, it is also our policy to attempt to involve birthfathers in any plan for a child. We consider their role important and are pleased to be able to provide the child that connection to his paternal history. Unfortunately the vast majority of birthfathers refuse that option, especially if their relationship with the birthmother has ended. In order to achieve a balance between protecting the rights of the birthfathers who wish to take responsibility and allowing a timely termination of rights for those who refuse that option, the registry was established. It puts the responsibility back in the hands of the interested birthfather to claim his rights and disarms the birthfather who would use his lack of cooperation as a weapon against the birthmother or the child.

**LUTHERAN
SOCIAL
SERVICES
OF
MONTANA**

Congregations, Communities, And People Serving Together
Since 1951



A Lutheran Social Service Agency

In addition to the establishment of the putative father registry, our work included an extensive review of the Uniform Adoption Law and of the laws of other states. Throughout the process of reviewing and revising the statutes we were able to apply them to real life situations and test their efficacy. Our experiences and those told to us by others led us to request mandatory birthmother counseling prior to relinquishment, to specify that all adoptive couples must receive homestudy services and to confirm the current law's provisions for an adult adoptee to access his or her history. Each revision was considered from the child's, the birthfamily's and the adoptive couple's perspective. In all decisions, the bottom line was the child's well being.

I urge you to consider this bill carefully and to ask for clarification wherever there is concern. I would ask you to note the strong support expressed for this bill from the people who know adoption best, the participants.

Thank you for your time and consideration.

Submitted by,

Linda Fagenstrom

Linda Fagenstrom, M.Ed.
Supervisor, Pregnancy/Adoption Program
LUTHERAN SOCIAL SERVICES OF MONTANA

LF:kb

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LEGISLATIVE COUNCIL
 REPORT NO. 4
 DATE 4/7/97
 FILE NO. HB 163

DARCY M. CRUM
ATTORNEY AT LAW

9 Third Street North, Suite 305
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TO: Senate Judiciary Committee
 FROM: Darcy M. Crum
 RE: HB 163
 DATE: April 7, 1997

I am a private attorney that has practiced in the adoption field for the last 11 years, representing both Lutheran Social Services of Montana, Inc. and private parties. I am also a member of the Adoption Task Force that has worked since summer, 1995 developing HB 163.

This bill is a vast improvement over existing law - both in terms of its content and its organization. One of the bill's main strengths is the organization of current statutes from throughout the code into logical categories. Now, statutes are grouped according to the type of adoption - agency, private, stepparent, adult. All the steps necessary to complete each different type of adoption follow each other in orderly fashion. This will assist greatly all parties involved in the adoption process. Further, the statutes are organized to spell out the rights and responsibilities of all parties involved in adoption - the Department, agencies, birth parents and adoptive parents.

In addition to reorganizing existing statutes into a more logical format, the bill also contains new provisions. One of the most significant is the putative father registry. The proposed registry builds on and strengthens the registration system in place under current law. The proposed registry increases the protections for a putative father who is interested in claiming responsibility for a child he has fathered while allowing adoptions to proceed more readily in situations where the putative father has shown no interest in the child. The registry places control of the process in the hands of the putative father. Once the registry is functional, it will eliminate the excessive time and effort I now spend in chasing down birth fathers who have been identified but have no interest in taking responsibility for their child.

I strongly urge you to support HB 163.

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HB 163 This is not thorough or complete, but should be of help. (1)

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 4/7/97

Section 1. **Short Title.** Amended (48-1-101)

Section 2. **Adoption policy.** (1), (2) and (3) are existing statute (40-8-114). (4) is new. HB 163

Section 3. **Definitions.** Most from existing statute (40-8-103) Definitions of adoptee, direct parental placement placing parent, pre-placement evaluation and records were added. Definitions of birth parent, confidential intermediary, court, extended family member, identifying information have been amended.

Section 4. **Venue.** (1) is current statute (40-8-107). (2) is new.

Section 5. **Who may be adopted.** Existing statute (40-8-104). 1(a) and (b) are existing statute. 1(c) is existing statute, but has been amended. (2) is existing statute and (3) is new.

Section 6. **Who may adopt.** Existing statute (40-8-106). "...who otherwise meet the requirements of sections [1-156]" has been added (line 16). (1) and (2) are existing statute. (3) is existing statute through "spouse" on line 21.

Section 7. **Adoption prohibited if child is not legally free.** Existing statute. (40-8-108). Amended. Only substantive change is addition of (d).

Section 8. **Rights and responsibilities of parties in adoption proceedings.** New. Added for clarification. Amended to delete "strictly" in line 1.

Section 9. **Need for finality--balancing of interests.** New. Amended. Second sentence now reads: "The legislature finds that the interests of the child outweigh the interests of the state, the mother, the adoptive parents and a birth father who is not married to the child's mother. Remainder is deleted.

Section 10. **Presumed knowledge that child may be adopted without notice.** New. Amended. Line 12 now says "...adopted without the father's consent and that the father is required to comply with the provisions of [sections 1-156] and manifest commitment to the father's parental responsibilities.

Section 11. **Unmarried birth mother's right to privacy.** Amends existing statute (40-8-128)(4) but not substantively. Was further amended by committee. Now reads "An unmarried birth mother has a right of privacy with regard to the birth mother's pregnancy and adoption plan. Birth mothers are encouraged to provide all known information about the birth father of any child for whom an adoption is planned."

Section 12. **Recognition of adoption in another jurisdiction.** Amends existing statute (40-8-128). Clarifies existing statute.

Section 13. **Proceedings subject to Indian Child Welfare Act--New.**

Section 14. **Interstate placement--New.**

NOTE: Sections 13 and 14 were added to reference existing federal and state laws.

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Section 15. **International placement.** Amends existing statute (40-8-128). Clarifies existing statute.

Section 16. **Fees for service--special revenue account--statutory appropriation.** (1) and (2) amend existing statute (40-8-109) but not substantively. (3) is new. (4) is existing statute (40-8-110) amended. Line 27 now reads "the department under [sections 1 through 156] and from the district court filing fee pursuant to 25-1-201(1)(g). The last sentence is new..

Section 17. **Rulemaking authority**

Sections 18-37 all relate to the putative father registry and all are new.

Section 18. **Definitions.**

Section 19. **Putative father registry.**

Section 20. **Purpose of registry.**

Section 21. **Presumed knowledge of pregnancy -- duty to register to be afforded notice -- putative and presumed fathers.**

Section 22. **Registration.**

Section 23. **When putative father to register -- actual knowledge of pregnancy not required.**

Section 24. **How registration submitted.**

Section 25. **Burden of putative father to preserve rights upon receipt of notice.**

Section 26. **Presumption created -- admissibility in other proceedings.**

Section 27. **Duties of department.**

Section 28. **Duties of department.**

Section 29. **Information maintained in the registry.**

Section 30. **Storage of data.**

Section 31. **Registry search -- request -- affidavit.**

Section 32. **Duties of department upon receipt of request.**

Section 33. **Failure of agency to post notice**

Section 34. **Revocation of registration.**

Section 35. **Certified copy of registration form to be furnished upon request.**

Section 36. **Information confidential.**

Section 37. **Registration of false information.**

Section 38. **Responsibility of each party to protect interests -- putative fathers -- fraud no defense.** New.

Section 39. **Consent required.** Amends existing statutes (40-8-111 and 40-8-113) but changes are not substantive.

Section 40. **Persons whose consent is not required.** Amends existing statute (40-8-111) but changes are not substantive.

Section 41. **Form of consent.** Amends existing statute (40-8-111(2)) but changes are not substantive.

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(3)

Section 42. **Child available for adoption--voluntary acts of parents.** New -- combines information in one section for clarification.

Section 43. **Voluntary relinquishment--validity.** New. Added for clarification.

Section 44. **Arrearages of child support--responsibility to child**

Section 45. **Who may relinquish--to whom.** New. Clarifies existing statutes.

Section 46. **Relinquishment by minor parent--separate legal counsel in direct parental placements.** Amends existing statute (40-8-105). (1) amended but no substantive change. (2) is new.

Section 47. **Time and prerequisites for execution of relinquishment and consent to adoption--copy of preplacement evaluation.** Existing statute (some amended, but not substantively unless indicated).

(1) existing statute (40-8-109(8))

(a) new

(b) existing statute (40-8-109(8)(a)) (amended by sub-committee)

© existing statute (40-8-116)

(d) new

(2) existing statute (40-8-111(b))

(3) existing statute (40-8-111(c))

(4) existing statute (40-8-113)

(5) new

(6) existing statute (40-6-135(4))

Section 48. **Counseling requirements.** Amends existing statute (40-8-116). Only substantive changes are noted. (1) existing statute amended to require counseling (although in practice, it has been) and to include in statute agency and department adoptions. Second sentence is new.

(2) Existing statute through "counseling." on line 8. Remainder is new.

(3) (a) existing statute through "procedures" on line 15. Remainder is new.

(b) existing statute amended to include information on availability of attorney

© existing statute

(d) new

(e) existing statute

(f) new

(g) new

(h) new

(i) new

(j) new

(4) existing statute through "consent." on line 2.

Section 49. **Revocation of relinquishment.** Amends 40-6-135(8) to allow for revocation with mutual consent, rather than requiring court to determine if revocation should be allowed and changes "placed for adoption" to "parental rights terminated" as condition under which a

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revocation is not permitted.

Section 50. Conditional relinquishment and consent. New.

Section 51. Content of relinquishment and consent to adopt. New, clarifies practice.

Section 52. Consequences of relinquishment and consent to adopt. New. Added for clarification.

Section 53. Grounds to set aside relinquishment and consent. New. (1) clarifies existing statute. (2) is new.

Section 54. Remedy when relinquishment and consent to adopt or set aside--expediency. New. Clarifies existing practice and provides direction to the court.

Section 55. Notarized denial of paternity --no entitlement to notice. Amends existing statute (40-6-129)(1)(b). Substantive change is that denial is irrevocable when executed.

Section 56. Notarized acknowledgment of paternity and denial of interest in custody--no entitlement to notice. Amends existing statute 40-6-129(1)(a). Substantive change is reference to putative father registry.

Section 57. Timing of proceedings to terminate. Existing statute (40-6-127)

Section 58. Expected child --filing of petition indicating intent to release or consent to adoption. (1) is existing statute (40-6-127). (2) is added for clarification.

Section 59. Notice to any named father of intent to release child for adoption. Amends existing statute 40-6-127 (2) and (3). Changes are not substantive. Temporary section.

Section 60. Notice to any named father of intent to release child for adoption. Amends existing statute 40-6-127(2) and (3). Amended to include reference to putative father registry.

Section 61. Venue. New. Clarifies practice.

Section 62. Necessity for parental rights to be terminated. New. Clarifies existing statutes.

Section 63. Petition for termination of parental rights. Amends 40-8-125. Only substantive change is allowance for conditional relinquishments [section 50].

Section 64. Contents of petition for termination of parental rights. New. Added for clarification. Most reflects current practice. Temporary section.

Section 65. Contents of petition for termination of parental rights. New. Added for clarification. Most reflects current practice. Includes putative father registry (2)(d).

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Section 66. **Notice of hearing--service.** Amends 40-6-128. Changes are not substantive.

Section 67. **Notice of hearing --service.** Amends 40-6-128. Amended further by sub-committee.

Section 68. **Hearing on petition to terminate parental rights.** Amends 40-6-128. Amended further by sub-committee.

Section 69. **Hearing on petition to terminate parental rights.** Amends 40-6-128. Further amended by sub-committee.

Section 70. **Grounds for termination of parental rights.** Amends 40-6-129. (1) no substantive changes. (2) new (3) new but not substantively different than 40-6-130.

Section 71. **Finding of unfitness.** Amends 40-8-111.

Section 72. **Determination that no parent and child relationship exists.** 40-6-128

Section 73. **Putative father--termination based on failure to establish substantial relationship.** New, clarifies existing statute (40-6-130).

Section 74. **Irrevocable waiver of parental rights.** Amends 40-6-129

Section 75. **Irrevocable waiver of parental rights.** Amends 40-6-129. Substantive change is reference to putative father registry.

Section 76. **Appearance of parent at hearing--determination of custody.** Amends 40-6-130, but changes are not substantive.

Section 77. **Effect of order terminating parental rights.** New. Clarifies existing statute.

Section 78. **Appeal.** 40-6-127. New, clarifies existing procedure.

Section 79. **Expediency.** New

Section 80. **Finality.** Amends 40-6-129(3). No substantive change.

Section 81. **Duty to disclose information--form--availability--filing.** Amends 40-8-109(3).

Section 82. **Retention of disclosures.** (1) new, (2) is existing statute

Section 83. **Preplacement evaluation -- timing.** Amends 40-8-115.

Section 84. **Initiation of preplacement evaluation--who conducts evaluation--payment of fees.** Amends 40-8-109.

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(6)

Section 85. **Information to be reviewed in conducting preplacement evaluation.** New in statute (most has been practice).

Section 86. **Contents of preplacement evaluation.** New in statute (most has been practice).

Section 87. **Recommendation.** New

Section 88. **Distribution of evaluation.** new and amended

Section 89. **Action by department.** New

Section 90. **Court Waiver for Relatives.** Amends 40-8-109. No substantive change.

Section 91. **Filing of evaluation in adoption proceedings.** 40-8-115 and 40-8-109

Section 92. **Requirement for preplacement evaluation.** New (has been practice)

Sections 93-103 pertain to direct parental placement adoptions.

Section 93. **Parties to direct parental placement.** New , but clarifies existing statutes and practice.

Section 94. **Duties of placing parent.** Existing and new. Amends 40-8-109, 40-8-116 and 40-8-135.

Section 95. **Direct parental placement--information to be filed.** Amends 40-8-109.

Section 96. **Duty of prospective adoptive parent to provide preplacement evaluation.** (1) based on existing statutes (40-8-109 and 40-8-115) amended for clarification (2) new.

Section 97. **Duty to promptly petition.** New

Section 98. **Custody order.** Amends 40-8-109(9)

Section 99. **Period for postplacement supervision.** Amends 40-8-124(6)

Section 100. **Postplacement evaluation for direct parental placement adoption.** Amends 40-8-122

Section 101. **Timing and filing of evaluation.**

Section 102. **Motion to enter adoption decree.** 40-8-123 and 40-8-124

Section 103. **Records.** New

Sections 104-111 pertain only to department or agency adoptions.

Section 104. **Factors to be considered--best interests of child.** Existing statute 40-8-114(4) and (5)

Section 105. **Parties to department or agency placement.** Amends 40-6-135(1) to require that a relinquishment be accepted in writing.

Section 106. **Duties of placing parent.** New . (Most has been practice.)

Section 107. **Counseling requirements.** New. (Has been practice)

Section 108. **Waiting period following placement of child.** Amends 40-8-123 (2). Substantive

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changes are (2)(b)(ii) and (3)

Section 109. **Petition for adoption filed by prospective adoptive parent** .New . (has been practice)

Section 110. **Postplacement department or agency evaluation**. Amends 40-8-12 (has been practice).

Section 111. **Consent to adoption**. Amends 40-8-111 and 40-8-112. (4) is only substantive change.

Sections 112-120 pertain to adoption of stepchildren or children to be adopted by a relative. These sections were included to make it easier for petitioners in these circumstances to know how to proceed.

Section 112. **Relinquishment to stepparent**. (1) is existing statute, (2) is new.

Section 113. **Standing to adopt stepchild**. New.

Section 114. **Consent to adoption**. New

Section 115. **Consent to adoption --stepparent's spouse**. New.

Section 116. **Consent to adoption--child's other parent**. New.

Section 117. **Postplacement evaluation period --waiver**. Amends 40-8-122(1), but not substantively.

Section 118. **Petition for adoption--hearing**. New.

Section 119. **Legal consequences of adoption of stepchild**.

Section 120. **Arrearages of child support**.

Sections 121-125 pertain to adoption of adults. Specific sections pertaining to adult adoptions were added rather than retaining references to which statutes pertaining to the adoption of children did or did not apply.

Section 121. **Adoption of adult**. Existing statute (40-8-201).

Section 122. **Who may adopt adult or emancipated minor**. New.

Section 123. **Consent to adoption**. New.

Section 124. **Jurisdiction and venue**. New

Section 125. **Procedure**. Amends 40-8-202 to clarify which statutes do not apply to adoption of adults.

Section 126. **Petition for adoption**. Amends 40-8-121. (1)(a) through (h) no substantive changes. (I) through (l) are new. (2) new and (3)(a) is current and (3) (b) is new.

Section 127. **Time for action on petition for adoption--waiver**. Amends 40-8-124. Clarifies when post-placement waiting period can be waived.

Section 128. **Notice of hearing**. Amends 40-8-124. Clarifies who needs to be served notice and how notice should be served.

Section 129. **Content of notice**. New.

Section 130. **Hearing on petition for adoption**. Amends 40-8-124. (1) is current statute, (2) is

[Handwritten signature]

new.

Section 131. **Granting petition for adoption--denial of petition.** Amends 40-8-124(6).

(1) Included to give court information as to what should be considered before issuing decree, (2) current statute.

Section 132. **Best interests of child.** New. Included to give courts direction as to factors that should be considered in determining the best interests of the child in granting an adoption petition or in a contested adoption proceeding.

Section 133. **Removal of child from state.** New. (1) will be new in practice as well as in statute. (2) in practice.

Section 134. **Decree of adoption.** New. Most is current practice.

Section 135. **Communication of decree to department.** 50-15-223

Section 136. **Effect of decree.** Amended 40-8-125. (1)(a), (b) and (4) are substantially the same. (2) was new and has been deleted. (3) is new.

Section 137. **Finality of decree --expedience.** New.

Section 138. **Rights of adoptee.** New?

Section 139. **Foreign adoption decrees.** Amends 40-8-128. Changes reference to [sections 1-156].

Section 140. **Visitation and communication agreements.** New. Included in response to a state Supreme Court opinion and also in response to the increasing number of open adoptions

Section 141. **Confidentiality of records and proceedings.** Amends 40-8-126. Substantive change is (2)(d) to the department's Child Support Enforcement Division providing services under 42USC 651 et.seq.

Section 142. **Disclosure of records --nonidentifying information--consensual release.** Amends 40-8-126. (1) current statute and (2) new.

Section 143. **Petition for appointment of confidential intermediary.** Amends 40-8-126. (2)(a) added "...as much of the following...", 2(b) and 2() are new.

Section 144. **Appointment of confidential intermediary --duties--payment.** Amended 40-8-126. (1) and (2) are in current statute. (3) through "court" on line 4 is current statute. (4), (5) and (6) are in current statute.

Section 145. **Disclosure authorized in course of employment.** New.

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Section 146. **Release of original birth certificate --certificate of adoption.** (1) new -- returns access for this time period to what it was before records were sealed in 1967. (2) new, but is what current statute allows (3), (4) and (5) are new.

Section 147. **Fees related to placement for adoption by parent.** Amends existing statute (40-8-135). (1) deletes "...documented in the report required by 40-8-136 and approved by the court." following "...actual cost of services on line 20. (1) (f), (g) following counseling, (h), (I), (j) and (k) following costs are new. (2) is new.

Section 148. **Limitations on payment for counseling and legal fees.** New.

Section 149. **Prohibited activities--violations --penalties.** Amends current statute (40-8-135). (1) New, clarifies Montana Supreme Court opinion and 52-2-402, (2) new, (3) no substantive changes, (4) lines 8 through] on line 9 and from "in" on line 9 through the end of line 11 are new.

Section 150. **Actions by department.** New.

Section 151. **Definitions.** Amends 52-2-401. (1) no changes, (2) and (3) are new. Added to clarify Montana Supreme Court decision.

Section 152. **General duties of department.** Amends 52-2-403. Changed from "issue licenses to persons now acting as agencies for procuring the adoption of minor children to or who desire to operate as such agencies in the future" to" (1), (2) added "revoked" to end of line 1. (3) not substantive.

Section 153. **License required--term of license--no fee charged.** Minor amendments to current statute (52-2-402) including addition of (e) and change in term of license from balance of calendar year to period of one year.

Section 154. **Requirements for licensure.** Amends current statute (52-2-404). Line 15 changed "must" to "may".

- (1) added "or a specific program within the agency"
- (2) wording -- not substantive
- (3) NEW
- (4) changed "personality" to "character".
- (5) wording -- not substantive
- (6) changed "must have and use facilities" to "shall maintain and use an in state office"
- (7) NEW
- (8) wording -- not substantive
- (9) wording -- not substantive

Section 155. **Investigation of agencies --cancellation of licenses.** Amends existing statute (52-2-405). Substantive change from "...department is precluded from the issuance of or continuation in effect of any such license for said agency for the subsequent year" to "...the

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department may suspend, revoke, or deny a license for the agency. (line 15).

Section 156. **Violation a misdemeanor--penalty.** (1) through \$1000 on line 21 is existing statute (52-2-407). Remainder of (1) and (2) is new.

Section 157 - 170 These sections amend sections of the MCA which will not be part of Title 42, but are affected by this bill. Most of the amendments delete reference to sections that are being repealed and add reference to sections that will be created by this bill.

Section 157. **2-6-104. Records of offices open to public inspection.** Repeals reference to 40-8-126 and amends section to reference [section 41].

Section 158. **2-18-606. Parental leave for state employees.** Repeals reference to 40-8-103 and amends section to reference 33-22-130. (see section 161)

Section 159. **17-7-502. Statutory appropriations -- definition -- requisites for validity.** Amends section to include [section 16].

Section 160. **25-1-201. Fees of clerk of district court.** Amends 25-1-201 to include fee for filing a petition for adoption and to remit \$70 of the \$75 collected to the special revenue account [section 16].

Section 161. **33-22-130. Coverage for adopted children from time of placement -- preexisting conditions.** Repeals reference to 40-8-103 and amends section to include new definition of placement. (The transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the child.)

Section 162. **33-30-1016. Coverage for adopted children from time of placement--preexisting condition.** Repeal reference to 40-8-103 and amends section to refer to new definition in 33-22-130 (see definition in 161.)

Section 163. **33-31-114. Coverage for adopted children from time of placement--preexisting conditions.** Repeals reference to 40-8-103 and amends this section to include the new definition in 33-22-130. (see definition in 161)

Section 164. **37-60-301. License required.** Amends 37-60-301, MCA. Confidential intermediaries do not have to be licensed as private investigators and private investigators are not authorized to act as confidential intermediaries unless they meet the requirements of [section 144].

Section 165. **40-6-168. Statute of limitations.** Amends reference to 40-6-105, repeals reference to Title 40 (current adoption statutes) and amends section to reference [sections 1-156] Minor wording amendments.

Section 166. **41-3-609. Criteria for termination.** Repeals reference to 40-6-135 and amends this section to reference [sections 43 and 51]. Minor wording change.

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Sections 167. **41-5-603. Youth court and department records.** Amends this section to allow access to records under [section 85].

Section 168. **41-5-604. Disposition of records.** Amends this section to reference [section 85].

Section 169. **50-15-223 Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity.** Amends this section to reference [sections 141-146] as circumstances under which records may be reviewed.

Section 170. **52-2-205 Records to be confidential.** Repeals reference to 40-8-126 and is amended to reference [section 141].

Sections 171-177 are self explanatory

Section 171 Repealer

Section 172 Severability

Section 173 Applicability

Section 174 Code Commissioner instructions

Section 175 Termination

Section 176 Notification to tribal governments

Section 177 Effective dates

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H21

DATE 4/7/97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 163

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
WAGGON HEE	MT CATH CONF	HB163	X	
Marilyn McKibben	Catholic Social Services	HB163	X	
Trudi Schmidt, Rpt 42	Luxu Soc Serv	HB163	X	
Ann Gilkey	DRHHS	HB163	X	
Kim Knudsen	self	HB163	X	
L. Mark Ricks	LDS Social S	HB163	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HB
163

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on April 8, 1997,
at 11:03 a.m., in the Senate Judiciary Chambers (Room 325)
of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 163

EXECUTIVE ACTION ON HB 163

Amendments: hb016301.avl, hb016302.avl (EXHIBITS #1 and #2)

Motion/Vote: SEN. RIC HOLDEN MOVED TO ADOPT hb016301.avl, A
TECHNICAL AMENDMENT. THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. HOLDEN MOVED TO ADOPT AMENDMENTS hb016302.avl.

Discussion: SEN. HOLDEN. The amendment would insert "the
department shall notify the birth father of the provisions of
this section if the birth father's name is known to the
department", on page 6, line 15 of the bill. The Committee

received a letter from a man in Missoula which has an excellent example of the situation I'm trying to address (**EXHIBIT #3**). **Ann Gilkey, Department of Public Health and Human Services**. Our main concern is that it seems to undermine the whole purpose of registry. This is a concern as the child's adoption could be interrupted.

CHAIRMAN BRUCE CRIPPEN. You're saying if he doesn't know, he's not entitled to know. **Ann Gilkey**. Registry gives him an opportunity not available in existing law, and by submitting a form to the Vital Statistics Bureau of the Department, he could be registered.

SEN. SUE BARTLETT. If the birth father hadn't shown up, how would the Department know his name? **SEN. HOLDEN**. That's why I think adding this language won't hurt the bill. **Ann Gilkey**. Our concern is that private (Catholic and Lutheran Social Services), direct, step-parent, and agency adoptions are all part of this bill. Also, if the father was violent and might harm the mother, how would this be handled?

SEN. MIKE HALLIGAN. This bill does address violent fathers, right? **Ann Gilkey**. Not specifically. We would have to rely upon the judge's discretion.

{Tape: 1; Side: A; Approx. Time Count: #12.0; Comments: 11:14 a.m.}

SEN. HALLIGAN. If we started the amendment with "except as..." and name the appropriate provisions in law, would that work? **Ann Gilkey**. Our concern is that the amendment, as it is now, could be interpreted more broadly than intended.

SEN. HOLDEN WITHDREW HIS MOTION.

Motion: **SEN. SHARON ESTRADA MOVED HB 163 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. HOLDEN**. There are about five things I want to address in the bill. On page 1, line 7, some women might have more than one possible father of their child. What happens if a registered man is later determined not to be the father? **Ann Gilkey**. The court could determine he's not a party after notice of termination of parental rights is sent. A judge would most likely order DNA testing.

SEN. HOLDEN. On page 19, line 11, is an attorney necessary at this point? How does Section 2 work? **Ann Gilkey**. If the parent is a minor, it would allow the adopting parents to assume attorney fees for the minor birth mother.

SEN. HOLDEN. On page 51, line 24, what will the taxpayers be paying for, and what are the counseling requirements? **Ann**

Gilkey. Sections 147 and 148 on pages 67 and 68 address part of this. Section 48, on page 20 covers counseling requirements.

SEN. HOLDEN. Are you expanding counseling duties? **Ann Gilkey.** No. We're just clarifying them. There is no additional expense. Counseling is a mandatory requirement now.

SEN. HOLDEN. Could you explain page 66, line 15? **Ann Gilkey.** It says anyone adopted before July 1, 1967 could request their original birth certificate, as long as the parent did not put a requirement that this not be allowed. People adopted under existing law would have to get this information under the new law, if this bill passes.

SEN. HOLDEN. If they were born in 1964, how would they get their original birth certificate under this law? **Ann Gilkey.** If they were born before 1967, they could go to the registrar, as there was no expectation of privacy for mother's back then.

SEN. HOLDEN. So the writer of the letter we received today could get help from the Department? **Ann Gilkey.** Yes.

SEN. REINY JABS. How does an adopted person get his or her original birth certificate? **Ann Gilkey.** Right now they can't get it, and they still couldn't if they were born between 1967 and 1998, unless they get them through a court order, although that is a more cumbersome process.

Vote: **SEN. ESTRADA'S MOTION THAT HB 163 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY. SEN. WATERMAN WILL CARRY THE BILL.**

Discussion: **SEN. HALLIGAN.** I was a confidential intermediary for a nineteen-year-old in Missoula. I spent weeks looking for his birth records, and in Oregon, I found a man who said he signed a form saying he was the father, but that he actually wasn't. He told me the mother was in Kansas, living near a military base, so I found her through computers in the sheriff's office. She verified that the man in Oregon was not the dad, and that the dad was actually of Eskimo heritage, as we had guessed. I found the dad when I called a bar in Ketchikan, Alaska. I was able to get the dad to talk to the son, and then got the mother to talk to him, and they ended up having a reunion.

SEN. ESTRADA. Two days ago, I spoke to a sister I didn't know I had. It's quite an emotional thing, but absolutely wonderful.

SEN. STEVE DOHERTY. I wondered if the Committee would entertain the notion of writing to the Montana Supreme court, and asking them to investigate the situation in the newspaper about the Clerk of the Supreme Court approaching a legislator in the other House. I believe this merits a look at resolution. **CHAIRMAN CRIPPEN.** Why don't you and I go talk to the Chief Justice? **SEN. DOHERTY.** Okay.

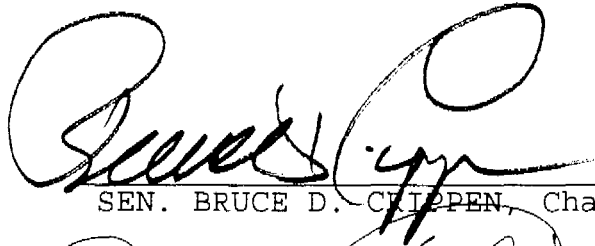
SENATE JUDICIARY COMMITTEE

April 8, 1997

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ADJOURNMENT

Adjournment: 11:40 a.m.


SEN. BRUCE D. CHIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB

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SEN:1995
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Amendments to House Bill No. 163
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
April 7, 1997

1. Page 83, line 25.
Strike: "69"
Insert: "68"

Amendments to House Bill No. 163
Third Reading Copy (blue)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
April 8, 1997

1. Page 6, line 15.

Following: "responsibilities."

Insert: "The department shall notify the birth father of the
provisions of this section if the birth father's name is
known to the department."

FROM : INSTY PRINTS D/T MISSOULA, MT. PHONE NO. : 406 721 7312

Apr. 08 1997 09:07AM P1

SENATE JUDICIARY (COMM) (P)

COMMITTEE NO. 3

DATE 4/8/97

FILE NO. HB 163

April 7, 1997 DELIVER BEFORE 9 AM

Kenny Ford
300 N 1st
Msls, MT 59802
406-721-0806

Attn; Jody Bird
C/O Senator Harp
Fax 406-444-4604

To the committee considering HB 163 concerning adoption.

I am an adopted person and would like to share with you some of my thoughts. I am 50 yrs. old and had the good fortune to be adopted as an infant by wonderful parents whom I love and am loved by. However, some of the things that I read in the newspaper about the new bill trouble me and I don't think parts of it have been thought through as carefully as they could be.

I have been searching for my birth parents for years. Regardless of the good upbringing I enjoyed, I have suffered many long years wanting to look on the faces of the people who created me. I would like to know if I have brothers or sisters. As time goes on I would like to know what, if any, medical problems may run in the family. Any adopted person I have ever known, and that would be many, share these legitimate concerns. Among those who have found their birth parents there have been mixed emotional results, a few not so good, most positive, and a few wonderful. The point is they all satisfied questions which needed to be answered for them to feel whole. Number one, "Who am I and where did I come from?" Number two, "Do I have other family?" Number three, "What will I probably have to look out for medically." There are many other questions that could be answered as well, but these are the ones with the important common threads, the ones that stay in the heart and in the mind, the ones that keep you awake at night.

In this age of the law suit it is important that the sanctity of

page 2 April 7, 1997 Kenny Ford, testimony about adoption

adoption be protected from birth parents who would want to change their mind. To allow this kind of thing is not in the best interest of the child and also may keep some people from wanting to adopt because of the fear of the heartbreak and trauma that could be caused to both them and the child because one of the birth parents may change their mind and challenge their parental rights in court. This should not be allowed to happen.

What I take issue with is the proposed new registry system. It hampers adopted children and birth parents from finding one another. Birth parents may hand over their emotional and financial responsibilities for the raising of a child, but they should not be allowed to shirk their responsibility for procreation because everyone has a need, and perhaps a right, to know where they came from and if they have any other family and what to expect medically.

Let's try this scenario. A young couple dates for awhile and then breaks up and the young man goes off to the army or to college not knowing that the girl is pregnant. A few years go by and he learns that she has given the child up for adoption. At that time he will may breathe a sigh of relief for not having to pay child support, but as maturity sets in that same person may often say to himself "Dear God I wish I could know what happened to my little girl or boy." I do not think that he should be allowed to challenge the adopted parents rights to custody, but I do think he should be allowed to register as a birth parent so that if that child wants to find him it would be more easily possible. I think the birth mother has a duty to disclose the identity of the birth father. I believe there should be a reasonable effort made to inform him of the pregnancy or birth, and that he should have a reasonable but very brief time to respond. However once an adoption has occurred it should be final. I also think that the birth parents names should be on the original birth certificate that the adopted child receives upon turning eighteen. Many people have suffered a lot of grief from not being able to find their parents or their sons and daughters. Please do not let this continue on behalf of all adoptees.

Thank you for listening 



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 8, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 163 (third reading copy -- blue), respectfully report that House Bill 163 be amended as follows and as so amended be concurred in.

Signed: *Bruce Crippen*
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 83, line 25.
Strike: "69"
Insert: "68"

-END-

[Signature]
Amd. Coord.
Sec. of Senate

Waterman
Senator Carrying Bill

741248SC.SRF

173

HOUSE BILL NO. 163

INTRODUCED BY J. JOHNSON, MENAHAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, AND 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of public health and human services authority to adopt administrative rules. The rules must provide procedures for the putative father registry, including methods of notification, filing, and accessing information. The department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary focus of the rules.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana Adoption Act".

1 **NEW SECTION. Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure
2 that the best interests of the child are met by adoption proceedings.

3 (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing
4 family that can give the child the care, protection, and opportunities essential for healthy personal growth
5 and development.

6 (3) The well-being of the adopted child is the main objective in the placement of a child for
7 adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition
8 of the interdependent needs and interests of birth parents and adoptive parents.

9 (4) It is the policy of the state of Montana to support relationships between adoptees and their birth
10 families when desired by the affected parties.

11
12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 156], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings
15 that are intended to result in the adoptee becoming the legal child of another person.

16 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
17 does not exist genetically.

18 (3) "Adoptive parent" means an adult who has become the mother or father of a child through the
19 legal process of adoption.

20 (4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United
21 States and that is expressly empowered to place children preliminary to a possible adoption.

22 (5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of
23 the child.

24 (6) "Child" means any person under 18 years of age.

25 (7) "Confidential intermediary" means a person certified by the department and under contract with
26 or employed by a nonprofit entity with expertise in adoption.

27 (8) "Court" means a court of record in a competent jurisdiction and in Montana means a district
28 court or a tribal court.

29 (9) "Department" means the department of public health and human services, provided for in
30 2-15-2201.

1 (10) "Direct parental placement adoption" means an adoption in which the parent of the child
2 places the child with a prospective adoptive parent personally known and selected by the parent
3 independent of an agency.

4 (11) "Extended family member" means a person who is or was the adoptee's parent, grandparent,
5 aunt or uncle, brother or sister, or child.

6 (12) "Identifying information" means information that directly reveals or indirectly indicates the
7 identity of a person and includes the person's name or address.

8 (13) "Nonidentifying information" means information that does not directly reveal or indirectly
9 indicate the identity of a person, including:

10 (a) medical information and information related to general physical characteristics;

11 (b) family information, including marital status and the existence of siblings;

12 (c) religious affiliation;

13 (d) educational background information that does not reveal specific programs or institutions
14 attended;

15 (e) general occupation;

16 (f) hobbies; and

17 (g) photographs provided by any of the parties involved that were specifically intended to be
18 provided to another party.

19 (14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose
20 parental rights have not been terminated.

21 (15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

22 (16) "Preplacement evaluation" means the home study process conducted by the department or
23 a licensed child-placing agency that:

24 (a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

25 (b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

26 (17) "Records" means all documents, exhibits, and data pertaining to an adoption.

27 (18) "Relinquishment" means the informed and voluntary release in writing of all parental rights
28 with respect to a child by a parent to an agency or individual.

29
30 **NEW SECTION.** **Section 4. Venue.** (1) Proceedings for adoption must be brought in the district

1 court of the county where the petitioners reside.

2 (2) Petitions for appointment of a confidential intermediary may be filed:

3 (a) in the county where the decree of adoption was issued;

4 (b) in the county of residence of the petitioner; or

5 (c) if the petitioner resides out of state, in any county.

6
7 **NEW SECTION. Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

8 (a) the child does not have a living parent;

9 (b) the parental rights of the living parents of the child have been terminated according to the laws
10 of this state or of another jurisdiction; or

11 (c) the living parents, guardian authorized by the court, or department or agency with custody of
12 the child consent to the adoption.

13 (2) An adult may be adopted as provided in [sections 121 through 125].

14 (3) A stepchild may be adopted as provided in [sections 112 through 120].

15
16 **NEW SECTION. Section 6. Who may adopt.** The following individuals who otherwise meet the
17 requirements of [sections 1 through 156] are eligible to adopt a child:

18 (1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the
19 child;

20 (2) an unmarried individual who is at least 18 years of age; or

21 (3) a married individual at least 18 years of age who is legally separated from the other spouse or
22 whose spouse has judicially been declared incompetent.

23
24 **NEW SECTION. Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree
25 may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

26 (2) A child may be placed for adoption only by:

27 (a) the department or another agency to which the child has been relinquished for purposes of
28 adoption;

29 (b) the department or another agency expressly authorized to place the child for adoption by a
30 court order terminating the relationship between the child and the child's parent or guardian;

(c) the child's parents; or

(d) a guardian expressly authorized by the court to place the child for adoption.

NEW SECTION. Section 8. Rights and responsibilities of parties in adoption proceedings. (1) The

legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining the necessary constitutional protection and appropriate processes.

(2) The legislature finds that:

(a) every child deserves to be raised by a family in which support and care are promptly provided by one or more parents in a nurturing environment on a regular and ongoing basis;

(b) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(c) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding the mother's future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(d) adoptive children have a right to permanence and stability in adoptive placements;

(e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(f) a birth father who is not married to the child's mother has the primary responsibility to protect the father's rights. The father's inchoate interest in the child requires constitutional protection only when the father has demonstrated a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to demonstrate that commitment by:

(i) timely and consistently providing financial support;

(ii) complying with the requirements of the putative father registry; and

(iii) demonstrating the establishment of a substantial relationship with the child as described in [section 73].

(3) If a birth father who is not married to the child's mother fails to grasp the opportunities that are available to the father to establish a relationship with the child, the father's parental rights will be lost

1 entirely by the failure to timely exercise it or by the failure to ~~strictly~~ comply with the available legal steps
2 to substantiate the parental interest.

3
4 **NEW SECTION. Section 9. Need for finality -- balancing of interests.** Finality is necessary in order
5 to facilitate the state's compelling interest. The legislature finds that the INTERESTS OF THE CHILD
6 OUTWEIGH THE interests of the state, the mother, ~~the child,~~ and the adoptive parents ~~outweigh the interest~~
7 ~~of, AND a birth father who is not married to the child's mother and who does not timely grasp the~~
8 ~~opportunities available to establish and demonstrate a relationship with the father's child in accordance with~~
9 ~~the requirements of the putative father registry.~~

10
11 **NEW SECTION. Section 10. Presumed knowledge that child may be adopted without notice.** A
12 birth father who is not married to the mother of the child is presumed to know that the child may be
13 adopted without the father's consent and ~~without notice to THAT~~ the father ~~unless the father strictly~~
14 ~~complies~~ IS REQUIRED TO COMPLY with the provisions of [sections 1 through 156] and ~~manifests~~
15 MANIFEST a ~~prompt and full~~ commitment to the father's parental responsibilities.

16
17 **NEW SECTION. Section 11. Unmarried birth mother's right of privacy.** An unmarried birth mother
18 has a right of privacy with regard to the mother's pregnancy and adoption plan ~~and therefore has no legal~~
19 ~~obligation to disclose the identity of the birth father of the child prior to or during an adoption proceeding.~~
20 ~~The mother does not have an obligation to volunteer information to the court with respect to a potential~~
21 ~~birth father who is not married to the mother.~~ BIRTH MOTHERS ARE ENCOURAGED TO PROVIDE ALL
22 KNOWN INFORMATION ABOUT THE BIRTH FATHER OF ANY CHILD FOR WHOM AN ADOPTION IS
23 PLANNED.

24
25 **NEW SECTION. Section 12. Recognition of adoption in another jurisdiction.** (1) A decree or order
26 of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree
27 or order is:

- 28 (a) issued by a court of any other state that is entitled to full faith and credit in this state; or
29 (b) entered by a court or administrative entity in another country acting pursuant to:
30 (i) that country's law; or

(ii) to any convention or treaty on intercountry adoption that the United States has ratified.

(2) The rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree or order were issued by a court of this state.

NEW SECTION. Section 13. Proceedings subject to Indian Child Welfare Act. A proceeding under [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., is subject to that act.

NEW SECTION. Section 14. Interstate placement. The Interstate Compact on the Placement of Children, Title 41, chapter 4, governs:

(1) an adoption in this state of a child brought into this state from another state by a prospective adoptive parent;

(2) a person residing in or an agency doing business from another state who places the child for adoption in this state; and

(3) the placement of a Montana child in another state.

NEW SECTION. Section 15. International placement. An adoption in this state of a child brought into this state from another country by a prospective adoptive parent or by a person who places the child for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty governing adoption that the United States has ratified and to any relevant federal law.

NEW SECTION. Section 16. Fees for services -- special revenue account -- statutory appropriation.

(1) The department shall establish fees that it may charge and that are reasonably related to the cost incurred by the department in completing or contracting for adoption services.

(2) The department may contract with licensed social workers or licensed child-placing agencies for the purposes of completing the preplacement or postplacement evaluation or for providing postplacement supervision.

(3) An agency contracting to perform the services may set and charge a reasonable fee commensurate with the services provided.

(4) There is an adoption services account in the state special revenue fund. The fees collected by

the department under [sections 1 through 156] AND FROM THE DISTRICT COURT FILING FEE PURSUANT TO 25-1-201(1)(Q) must be deposited into this account and may be used by the department for adoption services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.

NEW SECTION. Section 17. Rulemaking authority. The department may adopt rules to implement the administration and purposes of [sections 1 through 156].

NEW SECTION. Section 18. Definitions. As used in [sections 18 through 38], unless the context requires otherwise, the following definitions apply:

(1) "Child" includes an unborn child.

(2) (a) "Putative father" means an individual who may be a child's birth father but who:

(i) is not married to the child's mother on or before the date that the child is born; or

(ii) has not established paternity of the child ~~in a court proceeding~~ prior to the filing of a petition for termination of parental rights to the child for purposes of adoption.

(b) The term includes an individual who is:

(i) less than 18 years of age; and

(ii) not married to the child's mother even though the individual is a presumed father within the meaning of 40-6-105.

(3) "Registry" means the putative father registry established under [section 19].

NEW SECTION. Section 19. Putative father registry. The putative father registry is established within the vital statistics bureau of the department. The department shall adopt rules to administer the registry.

NEW SECTION. Section 20. Purpose of registry. (1) The purpose of the putative father registry is to provide notice of ~~adoption proceedings~~ TERMINATION OF PARENTAL RIGHTS to a putative father who asserts a parental interest in a child so that the putative father may appear in ~~an adoption~~ A proceeding and have an opportunity to establish that the putative father's inchoate rights in the child have vested because a substantial relationship with the child has been established as provided in [section 73].

(2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,

A putative father of a child who complies with the requirements of the putative father registry is entitled to notice of any ~~adoption~~ proceedings involving TERMINATION OF PARENTAL RIGHTS TO the child.

NEW SECTION. Section 21. Presumed knowledge of pregnancy -- duty to register to be afforded notice -- putative and presumed fathers. (1) A person who engages in sexual relations with a member of the opposite sex is presumed to know that a pregnancy could result.

(2) ~~A~~ IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED, A putative father is ~~not~~ entitled to notice of termination of parental rights proceedings for the purposes of adoption ~~unless~~ IF the putative father has ~~strictly~~ complied with the requirements of the putative father registry.

(3) An individual who is not married to the mother but who is presumed to be a father under 40-6-105 ~~is not relieved from the obligation of registering~~ AND REGISTERS in accordance with [sections 18 through 38] ~~in order~~ IS ENTITLED to receive notice of a termination of parental rights proceeding ~~for a child for whom the individual may be the presumed father.~~

NEW SECTION. Section 22. Registration. (1) ~~A~~ IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED, A putative father is entitled to notice of any ~~adoption~~ proceedings TO TERMINATE PARENTAL RIGHTS involving a child whom the putative father might have fathered if the putative father timely files the following information with the department:

(a) the putative father's:

(i) full name;

(ii) address at which the putative father may be served by certified mail, return receipt requested, with notice of a proceeding to terminate parental rights;

(iii) social security number;

(iv) date of birth; and

(v) tribal affiliation if applicable;

(b) the mother's:

(i) name, including all other names known to the putative father that the mother uses; and

(ii) address, social security number, and date of birth, if known;

(c) the child's:

(i) name and place of birth, if known; or

(ii) the approximate date and location of A POSSIBLE conception and the approximate expected date of delivery.

(2) If a putative father does not have an address where the putative father can receive notice of a termination of parental rights proceeding, the putative father may designate another person as an agent for the purpose of receiving notice. The putative father shall provide the department with the agent's name and the address at which the agent may be served. Service of notice by certified mail, return receipt requested, constitutes service of notice upon the putative father.

(3) A putative father shall register under this section on a registration form prescribed by the department or with a legibly typed or handwritten statement that provides the required information and that is submitted to the department pursuant to [section 24]. The registration must be signed by the putative father and notarized.

(4) A putative father who registers under this section is responsible for providing written updates regarding any change of the putative father's name or address.

NEW SECTION. Section 23. When putative father to register -- actual knowledge of pregnancy not required. (1) In order to be entitled, BECAUSE OF REGISTRATION, to receive notice of a termination of parental rights proceeding, a putative father's registration form complying with the requirements of [section 22] must be received by the department not later than ~~close of business on the date of the child's birth~~ 5 DAYS PRIOR TO A HEARING TO TERMINATE PARENTAL RIGHTS.

(2) A putative father may file all information required by [section 22] before a child's birth even though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has continued through gestation.

NEW SECTION. Section 24. How registration submitted. A putative father shall submit a registration form:

(1) in person; or

(2) by facsimile transmission, mail, private courier, or express delivery service.

NEW SECTION. Section 25. Burden of putative father to preserve rights upon receipt of notice.

When a putative father receives notice that a child in whom the putative father claims a parental interest is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out in [section 73] for determining whether the putative father has made reasonable efforts to establish a substantial relationship with the child who is the subject of the proceedings have been met.

NEW SECTION. Section 26. Presumption created -- admissibility in other proceedings. A person filing a registration form is presumed to be the father of the child for purposes of adoption unless the mother denies that the registrant is the father. The registration or any revocation that is filed is admissible in a paternity proceeding ~~under 40-6-107~~ and creates a rebuttable presumption as to the paternity of the child ~~for purposes of 40-6-107~~. The registration creates a rebuttable presumption as to paternity of the child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support enforcement action under Title 40, chapter 5.

NEW SECTION. Section 27. Duties of department. (1) The department shall:

(a) prescribe a registration form for the information that a putative father submits under [section 22]; and

(b) make the registration forms available through:

(i) the department;

(ii) each clerk of a district court;

(iii) each local health department; and

(iv) each county clerk and recorder.

(2) A notice provided by the department that informs the public about the purpose and operation of the registry must be posted in a conspicuous place by each:

(a) clerk of a district court;

(b) driver's examination station of the motor vehicle division of the department of justice;

(c) local health department; and

(d) county clerk and recorder.

(3) The title and registration bureau of the motor vehicle division of the department of justice and the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the

1 registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The
2 department shall provide the copies of the notices to the title and registration bureau and the county
3 treasurers.

4 (4) The notice under subsection (2) must include information regarding:

5 (a) where to obtain a registration form;

6 (b) where to register;

7 (c) the circumstances under which a putative father is required to register;

8 (d) the period under [section 23] during which a putative father is required to register in order to
9 entitle the putative father to receive notice of a proceeding to terminate parental rights;

10 (e) the information that must be provided for the registry and what other actions the putative father
11 is required to take to preserve a right to notice;

12 (f) the consequences of not submitting a timely registration; and

13 (g) the penalties for filing a false claim with the putative father registry.

14
15 **NEW SECTION. Section 28. Duties of department.** (1) The department shall:

16 (a) prescribe a registration form for the information that a putative father submits under [section
17 22]; and

18 (b) make the registration forms available through:

19 (i) the department;

20 (ii) each clerk of a district court; and

21 (iii) each local health department.

22 (2) A notice provided by the department that informs the public about the purpose and operation
23 of the registry must be posted in a conspicuous place by each:

24 (a) clerk of a district court;

25 (b) driver's examination station of the motor vehicle division of the department of justice;

26 (c) local health department; and

27 (d) county clerk and recorder.

28 (3) The notice under subsection (2) must include information regarding:

29 (a) where to obtain a registration form;

30 (b) where to register;

(c) the circumstances under which a putative father is required to register;

(d) the period under [section 23] during which a putative father is required to register in order to entitle the putative father to receive notice of an adoption;

(e) the information that must be provided for the registry and what other actions the putative father is required to take to preserve a right to notice;

(f) the consequences of not submitting a timely registration; and

(g) the penalties for filing a false claim with the putative father registry.

NEW SECTION. Section 29. Information maintained in registry. The department shall maintain the following information in the registry:

(1) the registration information provided by the putative father under [section 22];

(2) the date that the department receives a putative father's registration;

(3) the name and affiliation of any person who requests that the department search the registry to determine whether a putative father is registered in relation to a mother whose child is or may be the subject of a termination proceeding and the date the request is submitted; and

(4) any other information that the department determines is necessary to access the information in the registry.

NEW SECTION. Section 30. Storage of data. The department shall store the registry's data in a manner so that the data is accessible through:

(1) the putative father's name;

(2) the mother's name, INCLUDING HER MAIDEN NAME, IF KNOWN;

(3) the date of birth of the putative father, the mother, and the child, if known;

(4) the child's name, if known; and

(5) the social security number for the putative father, the mother, and the child, if known.

NEW SECTION. Section 31. Registry search -- request -- affidavit. (1) The following persons may at any time request that the department search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

(a) a representative of the department;

(b) a representative of an agency when the agency is or may be arranging an adoption;

(c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother; or

(d) any woman who is the subject of a registration.

(2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner shall:

(a) request that the department search the registry at least 1 day after the expiration of the period specified under [section 23]; and

(b) file an affidavit prepared by the department in response to a request under subsection (2)(a) with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit must meet the requirements of subsections (4) and (5).

(3) A request for information about a registration from the department must be in writing.

(4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall submit an affidavit to the requestor verifying whether a putative father has registered within the period allowed under [section 23] in relation to a mother whose child or expected child is the subject of the termination proceeding.

(5) Whenever the department finds that one or more putative fathers are registered, the department shall:

(a) submit a copy of each registration form with the department's affidavit; and

(b) include in the affidavit the date that the department representative, agency, or attorney submitted the request for the search.

(6) A court may not issue an order terminating parental rights unless the department's affidavit under subsection (5) is filed with the court.

NEW SECTION. **Section 32. Duties of department upon receipt of request.** (1) Whenever the department receives a request, the department shall:

(a) search its records of putative father registrations and search its records for any acknowledgement of paternity filed pursuant to 40-6-105; and

(b) notify the requestor as to whether a paternity action has been filed and a paternity order issued to the department pursuant to ~~40-6-116~~ requiring the issuance of a new birth certificate concerning a child

who is or may be the subject of an adoption that the attorney or agency is arranging.

(2) The department may charge a reasonable fee for responding to a request under this section.

NEW SECTION. Section 33. Failure to register — irrevocable implied consent — fraud OF AGENCY TO POST NOTICE. ~~(1) A putative father who fails to register within the period specified under [section 23] waives notice of a termination proceeding.~~

~~(2) The putative father's waiver under subsection (1) constitutes an irrevocable implied consent to the child's adoption.~~

~~(3) Failure of an agency to post a proper notice under [section 27] does not relieve a putative father of the obligation to register with the department in accordance with the putative father registry in order to entitle the putative father, BECAUSE OF REGISTRATION, to notice of proceedings involving a child who may have been fathered by the putative father.~~

NEW SECTION. Section 34. Revocation of registration. ~~A UNLESS A SUPPORT ORDER HAS BEEN ISSUED, A~~ putative father may revoke a registration at any time by submitting to the department a signed, notarized statement revoking the registration.

NEW SECTION. Section 35. Certified copy of registration form to be furnished upon request. The department shall furnish a certified copy of the putative father's registration form upon written request by:

- (1) a putative father whose name appears on the registration form being requested;
- (2) a mother whose name appears on the registration form being requested;
- (3) upon reaching majority, a person who was the subject of a registration;
- (4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother;
- (5) a licensed child-placing agency;
- (6) a court that presides over a pending adoption;
- (7) the child support enforcement division of the department; or
- (8) a representative of the department involved in an adoption or a neglect and dependency proceeding under Title 41, chapter 3.

1 **NEW SECTION.** **Section 36. Information confidential.** Except as otherwise provided in [sections
2 18 through 38], information contained within the registry is confidential.

3
4 **NEW SECTION.** **Section 37. Registration of false information -- criminal and civil penalties.** A
5 person who purposely or knowingly registers false information or requests confidential information in
6 violation of a putative father registry commits a misdemeanor and may be civilly liable for damages.

7
8 **NEW SECTION.** **Section 38. Responsibility of each party to protect interests -- putative fathers --**
9 **fraud no defense.** (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation
10 in adoption proceedings and has provided a method for absolute protection of a putative father's rights by
11 ~~compliance with the provisions of the putative father registry.~~ In balancing the rights and interests of the
12 state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative
13 father, the legislature determines that the putative father is in the best position to prevent or ameliorate the
14 effects of fraud and that, therefore, the burden of establishing fraud **AGAINST THE PUTATIVE FATHER** by
15 clear and convincing evidence must be born by the putative father.

16 (2) Each parent of a child conceived or born outside of marriage to the other parent is responsible
17 for that parent's own actions and assertion of their parental rights notwithstanding any action, statement,
18 or omission of the other parent or third parties.

19 (3) A person injured by fraudulent representations or actions in connection with an adoption is
20 entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to
21 ~~strictly~~ comply with the requirements of the putative father registry and is not a basis for dismissal of a
22 petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

23 (4) A putative father who resides in another state may contest an adoption prior to issuance of a
24 decree of adoption and may assert the putative father's interest in the child. If the adoption is contested,
25 the court shall hold an evidentiary hearing to determine if:

26 (a) the putative father resides and has resided in another state where the unmarried mother lived
27 or resided either at the time of conception or through a portion of the pregnancy;

28 (b) the mother left that state, concealing the location from the putative father regarding where the
29 mother could be contacted or located;

30 (c) the father has, through every reasonable means, attempted to locate the mother but has been

1 unable to do so; and

2 (d) the putative father has complied with the ~~most stringent and complete~~ requirements of the state
3 where the mother previously resided or was located in order to protect and preserve the putative father's
4 parental interest and rights concerning the child in cases of adoption.

5
6 **NEW SECTION. Section 39. Consent required.** An adoption of a child may be decreed when
7 written consents to adoption have been executed by:

8 (1) the birth mother;

9 (2) the husband of the birth mother if the husband is the presumed father of the child under
10 40-6-105;

11 (3) any other person whose parental rights have been established by a court;

12 (4) the department or an agency that has custody of the child and the authority to place the child
13 for adoption;

14 (5) the legal guardian of the child if both parents are dead or their rights have been judicially
15 terminated and the guardian has authority by order of the court appointing the guardian to consent to the
16 adoption;

17 (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child
18 does not have the mental capacity to consent.

19
20 **NEW SECTION. Section 40. Persons whose consent not required.** Consent to adoption of a child
21 is not required from:

22 (1) an individual whose parental relationship to the child has been judicially terminated for unfitness
23 or has been determined not to exist or who has waived parental rights;

24 (2) a parent who has been judicially declared incompetent;

25 (3) an individual who has not been married to the mother of the child and who, after the
26 conception of the child, executes a notarized statement denying paternity or a notarized statement
27 acknowledging paternity and denying any interest in the child; or

28 (4) the personal representative of a deceased parent's estate.

29
30 **NEW SECTION. Section 41. Form of consent.** The consents required by [section 39] must be

1 acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of
2 the department, an agency, or the court.

3
4 **NEW SECTION. Section 42. Child available for adoption -- voluntary acts of parents.** A parent may
5 voluntarily make a child available for adoption by:

- 6 (1) executing a voluntary relinquishment and consent to adoption;
7 (2) executing a denial of paternity; or
8 (3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of
9 the child.

10
11 **NEW SECTION. Section 43. Voluntary relinquishment -- validity.** (1) A voluntary relinquishment
12 is not valid unless the parent specifically relinquishes custody of the child to the department, a licensed
13 child-placing agency, or a specifically identified prospective adoptive parent and:

14 (a) the department or agency to whom the child is being relinquished has agreed in writing to
15 accept custody of the child until the child is adopted; or

16 (b) the identified prospective adoptive parent has agreed in writing to accept temporary custody
17 and to provide support and care to the child until that person's adoption petition is granted or denied.

18 (2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve
19 the parent executing the relinquishment of any duty owed to the child OR FOR THE CHILD'S SUPPORT.

20
21 **NEW SECTION. Section 44. Arrearages of child support -- responsibility to child.** (1) A voluntary
22 relinquishment of a parent's rights and responsibilities toward a child ~~do~~ DOES not cancel any responsibility
23 to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to
24 waive the payment of the arrearages.

25 (2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child
26 remains financially responsible for the child until a court actually terminates parental rights to the child.

27
28 **NEW SECTION. Section 45. Who may relinquish -- to whom.** (1) A parent or guardian whose
29 consent to the adoption of a child is required may relinquish to the department or an agency all rights with
30 respect to the child, including legal and physical custody and the right to consent to the child's adoption.

(2) A parent or guardian whose consent to the adoption of a child is required and who has filed a notice of parental placement under [section 95] for a direct parental placement adoption may:

- (a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal and physical custody; and
- (b) consent to the child's adoption by the prospective adoptive parents.

NEW SECTION. Section 46. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the limitations in [section 148].

NEW SECTION. Section 47. Time and prerequisites for execution of relinquishment and consent to adoption -- copy of preplacement evaluation -- notarization. (1) A parent whose consent to the adoption of a child is required may execute a relinquishment and consent to adoption only after the following criteria have been met:

- (a) the child has been born;
- (b) not less than 72 hours have elapsed since the birth of the child ~~if the person relinquishing parental rights is the child's birth mother;~~
- (c) the parent has received counseling in accordance with [section 48]; and
- (d) in a direct parental placement adoption:
 - (i) the parent has been informed that fees for any required counseling and legal fees are allowable expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations set in [section 148];
 - (ii) if the parent is a minor, the parent has been represented by separate legal counsel; and
 - (iii) prior to the execution of the relinquishment, the parent has been provided a copy of the

1 preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

2 (2) A guardian may execute a relinquishment and consent to adopt at any time after being
3 authorized by a court.

4 (3) The department or a licensed child-placing agency may execute a consent for the adoption at
5 any time before or during the hearing on the petition for adoption.

6 (4) A child whose consent is required may execute a consent at any time before or during the
7 hearing on the petition to adopt.

8 (5) Except as provided in this section, a relinquishment and consent to adopt must be a separate
9 instrument executed before a notary public.

10 (6) If the person from whom a relinquishment and consent to adopt is required is a member of the
11 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
12 authorized by law to administer oaths.

13

14 **NEW SECTION. Section 48. Counseling requirements.** (1) Counseling of the birth mother is
15 required in department, agency, and direct parental placement adoptions. If any other parent is involved
16 in an adoptive placement, counseling of that parent is encouraged.

17 (2) Counseling must be performed by a person employed by the department or by a staff person
18 of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling
19 requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed
20 prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and
21 consent to adopt executed prior to completion of required counseling is void.

22 (3) During counseling, the counselor shall offer an explanation of:

23 (a) adoption procedures and options that are available to a parent through the department or
24 licensed child-placing agencies;

25 (b) adoption procedures and options that are available to a parent through direct parental placement
26 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be
27 paid by a prospective adoptive parent as provided in [sections 147 and 148];

28 (c) the alternative of parenting rather than relinquishing the child for adoption;

29 (d) the resources that are available to provide assistance or support for the parent and the child
30 if the parent chooses not to relinquish the child;

- (e) the legal and personal effect and impact of terminating parental rights and of adoption;
- (f) the options for contact and communication between the birth family and the adoptive family;
- (g) postadoptive issues, including grief and loss;
- (h) the reasons for and importance of providing accurate medical and social history information

under [section 81];

- (i) the operation of the confidential intermediary program; and

- (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate.

(4) The counselor shall prepare a written report containing a description of the topics covered and the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report ~~may~~ MUST, ON REQUEST, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents.

NEW SECTION. Section 49. Revocation of relinquishment and consent. (1) The parent who executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation prior to the issuance of an order terminating parental rights.

- (2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

NEW SECTION. Section 50. Conditional relinquishment and consent. (1) A relinquishment and consent to adopt may provide that it not take effect only if:

- (a) the other parent does not execute a relinquishment and consent to adopt within a specified period; or

- (b) a court decides to not terminate another individual's parental relationship to the child.

(2) A relinquishment and consent to adopt may not be conditioned on whether or not existing agreements for matters, including but not limited to visitation and ongoing communication with the child, are later performed.

1 NEW SECTION. Section 51. Content of relinquishment and consent to adopt. (1) A

2 relinquishment and consent to adopt must be in writing and must contain:

3 (a) the date, place, and time of the execution of relinquishment and consent to adopt;

4 (b) the name, date of birth, and current mailing address of the individual executing the
5 relinquishment and consent to adopt;

6 (c) the date of birth and the name of the child to be adopted; and

7 (d) the name, address, and telephone numbers of the department or agency to which the child is
8 being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the
9 lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment
10 and consent has placed or intends to place the child for adoption.

11 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
12 parent or guardian executing the document is voluntarily and unequivocally consenting to the:

13 (a) permanent transfer of legal and physical custody of the child to the department or agency for
14 the purposes of adoption; or

15 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific
16 identified adoptive parent whom the parent or guardian has selected.

17 (3) A relinquishment and consent to adopt must state:

18 (a) that after the document is signed or confirmed in substantial compliance with this section, it
19 is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any
20 reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and
21 consent to adopt to visit or communicate with the child;

22 (b) that the adoption will extinguish all parental rights and obligations that the individual executing
23 the relinquishment and consent to adopt has with respect to the child, except for arrearages of child
24 support unless the arrearages are waived by the person to whom they are owed, and that the
25 relinquishment will remain valid whether or not any agreement for visitation or communication with the child
26 is later performed;

27 (c) that the individual executing the relinquishment and consent to adoption has:

28 (i) received a copy of the relinquishment and consent to adoption;

29 (ii) received a copy of a written agreement by the department, agency, or prospective adoptive
30 parent to accept temporary custody and to provide support and care to the child until an adoption petition

1 is granted or denied;

2 (iii) if required, received counseling services and information about adoption pursuant to [section
3 48] explaining the meaning and consequences of an adoption;

4 (d) in direct parental placement adoptions, that the individual has:

5 (i) been advised if the individual is:

6 (A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which
7 the child is being relinquished; or

8 (B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency
9 and whose fees are allowable expenses that can be paid by the prospective adoptive parents;

10 (ii) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

11 (e) in agency and direct parental placement adoptions, that the individual has:

12 (i) been advised of the obligation to provide the medical and social history information required
13 under [section 81] pertaining to disclosures; and

14 (ii) not received or been promised any money or anything of value for execution of the
15 relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

16 (4) A relinquishment and consent to adopt ~~must~~ MAY provide that the individual who is
17 relinquishing waives notice of any proceeding for adoption.

18
19 **NEW SECTION. Section 52. Consequences of relinquishment and consent to adopt.** Except under
20 a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is
21 executed by a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The
22 relinquishment and consent to adopt:

23 (1) unless a court orders otherwise to protect the welfare of the child, entitles the department,
24 agency, or prospective adoptive parent named or described to the legal and physical custody of the child
25 and imposes on that department, agency, or prospective adoptive parent responsibility for the support and
26 medical and other care of the child;

27 (2) terminates, AS PROVIDED IN [SECTION 44], any duty of the parent who executed the
28 document with respect to the child except for arrearages of child support; and

29 (3) terminates any right of the parent or guardian who executed the document to:

30 (a) object to the placement of the child for adoption by the department or agency; AND

(b) object to the child's adoption by the prospective adoptive parent; and

~~(c) notice of the proceeding for adoption.~~

NEW SECTION. Section 53. Grounds for court to set aside relinquishment and consent. (1) The court shall set aside a relinquishment and consent to adopt if the individual who executed the relinquishment and consent establishes:

(a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was obtained by fraud or duress; or

(b) by a preponderance of the evidence, that a condition permitting revocation has occurred, as expressly provided for in [section 50].

(2) A verbatim record of testimony must be made.

NEW SECTION. Section 54. Remedy when relinquishment and consent to adopt revoked or set aside -- expediency. (1) If a relinquishment and consent to adopt that was executed by an individual is revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the child to the individual's custody and move to dismiss a proceeding for adoption or termination of the individual's parental rights to the child unless:

(a) the department has legal custody pursuant to a court order;

(b) there are grounds for the department to seek a court order under the provisions of Title 41, chapter 3; or

(c) the individual did not have legal custody of the child at the time the relinquishment and consent to adopt was executed.

(2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no existing court order providing for care and custody, the court shall issue an order providing for the care and custody of the child according to the best interests of the child under any law applicable to the circumstances of the case.

(3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment or consent a child is not returned immediately by the department, agency, or prospective adoptive parent, the individual may petition the court for appropriate relief. The action must take precedence over other cases and matters in the court. The court shall examine the petition, hear the case, and render a decision

as soon as possible.

NEW SECTION. Section 55. Notarized denial of paternity -- no entitlement to notice. (1) Execution of a notarized denial of paternity of a child is a voluntary act that constitutes a waiver of all parental rights to the child, EXCEPT FOR THE DUTY TO PAY SUPPORT IF PATERNITY IS ESTABLISHED OR PRESUMED.

(2) A notarized denial of paternity is irrevocable when executed. An individual who has executed a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of either the hearing to terminate parental rights or the hearing on an adoption petition.

NEW SECTION. Section 56. Notarized acknowledgment of paternity and denial of interest in custody -- no entitlement to notice. (1) Submission of a notarized acknowledgment of paternity and a denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental rights to the child BUT DOES NOT ABSOLVE THE PERSON OF THE DUTY TO PAY SUPPORT.

(2) An individual who has executed an acknowledgment of paternity and denial of interest in the custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the acknowledgment of paternity and denial of interest in custody, the individual has ~~strictly~~ complied with all of the requirements of [section 22] and has done so within the time limits established in [section 23].

NEW SECTION. Section 57. Timing of proceedings to terminate. (1) In order to provide notice to a putative father at the earliest possible time of an expectant mother's intent to release an expected child for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption prior to the birth of the child.

(2) A petition to terminate parental rights may also be filed after a child is born.

NEW SECTION. Section 58. Expected child -- filing of petition indicating intent to release or consent to adoption. (1) A pregnant individual may file a petition with the court indicating the intention to place an expected child for adoption.

(2) The petition must include the following information:

1 (a) the individual's intent to release the expected child for adoption;

2 (b) the approximate date and location of conception;

3 (c) the expected date of delivery;

4 (d) any information concerning the identity and whereabouts of any putative or presumed father
5 of the expected child ~~unless the birth mother relies on the right to privacy~~; and

6 (e) in a situation in which there is a presumed father, the grounds upon which the individual relies
7 in contending that the nonexistence of the father and child relationship can be established in an action
8 brought under 40-6-107.

9 (3) The petition may allege more than one putative or presumed father.

10 (4) The petition must be signed by the petitioner and notarized.

11
12 **NEW SECTION. Section 59. Notice to any named father of intent to release child for adoption.**

13 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
14 child for adoption.

15 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
16 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
17 of the child. Proof of service must be filed with the court.

18 (3) A notice of intent to release directed to a putative father must indicate the approximate date
19 and location of conception of the child and the expected date of birth and must inform the putative father
20 that:

21 (a) in order to protect the putative father's rights to the child, the putative father is required to file
22 notice of intent to claim paternity before the expected date of birth;

23 (b) the putative father is required to appear at the hearing at the time and date set by the court;

24 (c) the failure to file notice of intent to claim paternity before the expected date of birth:

25 (i) constitutes a waiver of the right to receive the notice provided for in [section ~~22~~ 66];

26 (ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

27 (iii) will result in the court's termination of the putative father's rights to the child.

28 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
29 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
30 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds

for seeking the declaration.

NEW SECTION. Section 60. Notice to any named father of intent to release child for adoption.

(1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a child for adoption.

(2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth of the child. Proof of service must be filed with the court.

(3) A notice of intent to release directed to a putative father must indicate the approximate date and location of conception of the child and the expected date of birth and must inform the putative father:

~~(a) that in order to protect the putative father's rights to the child, the putative father is required to register with the putative father registry as of the close of business on the expected date of birth of the child;~~

~~(b)(A)~~ that the putative father is required to appear at the hearing at the time and date set by the court;

~~(c)(B)~~ of the rights and responsibilities to which the putative father will be entitled upon registering with the putative father registry; and

~~(d)(C)~~ that the failure to TIMELY comply with all requirements of filing with the putative father registry ~~before the expected date of birth:~~

(i) constitutes a waiver of the right to receive the notice provided for in [section 22]; AND

~~(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and~~

~~(iii)(II)~~ will MAY result in the court's termination of the putative father's rights to the child.

(4) In addition to the information contained in subsection (3), a notice of intent to release directed to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds for seeking the declaration.

NEW SECTION. Section 61. Venue. Proceedings to terminate parental rights may be filed in the court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing the child is located.

1 **NEW SECTION. Section 62. Necessity for parental rights to be terminated.** A child is not legally
2 free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

- 3 (1) as provided in [sections 1 through 156];
4 (2) pursuant to Title 41, chapter 3; or
5 (3) of competent jurisdiction in another state or country.

6
7 **NEW SECTION. Section 63. Petition for termination of parental rights.** (1) Pending the termination
8 or other disposition of the rights of the father of the child, the birth mother may execute a relinquishment
9 and consent to adoption.

10 (2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the
11 relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and
12 notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title
13 41, chapter 3.

14 (3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned
15 as set forth in [section 50].

16 (4) Pending disposition of the petition, the court may enter an order authorizing temporary care of
17 the child.

18
19 **NEW SECTION. Section 64. Contents of petition for termination of parental rights.** (1) The
20 petition for termination of parental rights must state:

- 21 (a) the identity of the petitioner;
22 (b) the date and location of the birth of the child;
23 (c) the date of the relinquishment by the birth mother or relinquishing parent;
24 (d) the current location of the child;
25 (e) the names and locations, if known, of any putative or presumed father of the child;
26 (f) efforts and inquiries made to locate any parent whose identity is known but whose whereabouts
27 are unknown;
28 (g) the grounds on which the parental rights of any ~~putative or presumed father~~ **PARENT** to the
29 child should be terminated;
30 (h) whether a putative or presumed father is one from whom consent is not required;

(i) whether court orders from any other proceeding have been issued terminating parental rights to the child who is the subject of the petition;

(j) any other evidence supporting termination of the legal rights that a person has with regard to the child; and

(k) a request for custody of the child prior to the adoption.

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

(a) any relinquishments and consents to adoption;

(b) any denials of paternity;

(c) any acknowledgments of paternity and denial of parental rights;

(d) any response from the department to a request of whether any notice of intent to claim paternity has been filed;

(e) a counseling report required under [section 48]; ~~and~~

(f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service received-; AND

(G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

NEW SECTION. **Section 65. Contents of petition for termination of parental rights.** (1) The petition for termination of parental rights must state:

(a) the identity of the petitioner;

(b) the date and location of the birth of the child;

(c) the date of the relinquishment by the birth mother or relinquishing parent;

(d) the current location of the child;

(e) the names and locations, if known, of any putative or presumed father of the child;

(f) whether a parent is one from whom consent is not required;

(g) whether court orders from any other proceeding have been issued terminating parental rights to the child that is the subject of the petition;

(h) any other evidence supporting termination of the legal rights that a person has with regard to the child; and

(i) a request for temporary custody of the child prior to the adoption.

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

(a) any relinquishments and consents to adoption;

(b) any denials of paternity;

(c) any acknowledgments of paternity and denial of parental rights;

(d) any affidavits from the putative father registry that have been executed by the department;

(e) a counseling report required under [section 48]; ~~and~~

(f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service received-; AND

(G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

NEW SECTION. **Section 66. Notice of hearing -- service.** (1) Notice of a hearing to be held on the petition for termination of parental rights must be served in any manner appropriate under the Montana Rules of Civil Procedure or in any manner that the court may direct on:

(a) a putative or presumed father;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(c) a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth;

(d) a parent or legal guardian of the child in question who has not waived notice; or

(e) any other person who is reasonably believed to be the father.

(2) The notice of hearing must inform the putative or presumed father that failure to appear at the hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's termination of the individual's rights to the child.

(3) Proof of service of the notice of hearing must be filed with the court. A notarized acknowledgement of service by the party to be served is proof of personal service. Proof of service is not required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual entitled to receive notice is sufficient.

(4) If a person has not been identified as the father or putative father of the child, the court, on the basis of all information available, shall determine whether publication of notice of the proceeding is likely to lead to identification. If so, the court shall order publication in the manner that it considers appropriate. The name of the birth mother may be included in the publication only with the mother's written consent.

(5) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who has not waived the right to notice of hearing and that person is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

NEW SECTION. Section 67. Notice of hearing -- service. (1) Notice of a hearing to be held on the petition for termination of parental rights must be served in any manner appropriate under the Montana Rules of Civil Procedure or in any manner that the court may direct on:

(a) a putative or presumed father who has timely and properly complied with the putative father registry;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(C) A PERSON ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD FOR THE PURPOSE OF CHILD SUPPORT;

(D) A PERSON WHO IS RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S FATHER;

(E) A PERSON WHO IS OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF AN AUTHORIZED AGENCY AND WHO IS REPRESENTING TO THE PUBLIC THAT THE PERSON IS THE CHILD'S FATHER;

~~(F)~~ a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth; or

~~(G)~~ a parent or legal guardian of the child in question who has not waived notice.

(2) The notice of hearing must inform the putative or presumed father or other parent that failure to appear at the hearing constitutes a ~~denial~~ WAIVER of the individual's interest in custody of the child and

1 will result in the court's termination of the individual's rights to the child.

2 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
3 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
4 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
5 entitled to receive notice is sufficient.

6 (4) If the court finds that the father of the child is a person who did not receive either a timely
7 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
8 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
9 adjourn further proceedings until that person is served with a notice of hearing.

10
11 **NEW SECTION. Section 68. Hearing on petition to terminate parental rights.** (1) The court shall
12 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
13 ~~father~~ PARENTS of the child.

14 (2) If ~~the mother has failed to name~~ a putative father HAS NOT BEEN NAMED and no one has filed
15 ~~notice of intent to claim paternity~~ REGISTERED WITH THE PUTATIVE FATHER REGISTRY, the court shall
16 cause inquiry to be made in an effort to identify the ANY LEGAL father. The inquiry must include whether
17 the mother was married at the time of conception of the child or at any time after conception AND PRIOR
18 TO BIRTH.

19 (3) Based on the evidence received and the court's inquiry, the court shall enter a finding
20 identifying the father or declaring that the identity of the father could not be determined.

21 (4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
22 court shall enter an order concerning the parental rights to the child.

23 (5) If the court terminates the parental rights to the child and the department, agency, or
24 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
25 shall issue an order awarding custody of the child to the petitioner.

26
27 **NEW SECTION. Section 69. Hearing on petition to terminate parental rights.** (1) The court shall
28 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
29 ~~father~~ PARENT of the child.

30 (2) If ~~the mother has failed to name~~ a putative father HAS NOT BEEN NAMED and no one has

~~registered with the putative father registry~~ FILED NOTICE OF INTENT TO CLAIM PATERNITY, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must include:

(a) whether the mother:

(i) was married at the time of conception of the child or at any time after conception AND PRIOR TO BIRTH;

(ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the child; and

(iii) has received support payments or promises of support payments for the child or in connection with the pregnancy; and

(b) whether any person formally or informally acknowledged possible paternity to the child.

(3) PROOF OF SERVICE OF NOTICE OR PROOF OF ACKNOWLEDGEMENT OF SERVICE ON ANY PERSON OR PROOF OF WAIVER BY A PERSON LEGALLY REQUIRED TO BE GIVEN NOTICE MUST BE FILED WITH THE COURT.

~~(3)(4)~~ Based on the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father could not be determined.

~~(4)(5)~~ Based on the grounds set forth in [section 70] and the evidence received at the hearing, the court shall enter an order concerning the parental rights to the child.

~~(5)(6)~~ If the court terminates the parental rights to the child and the department, agency, or prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court shall issue an order awarding custody of the child to the petitioner.

NEW SECTION. Section 70. Grounds for termination of parental rights. The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

(b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

(c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the child executed pursuant to [section 56];

(2) a determination under [section 71] that the parent is unfit;

(3) a determination under [section 72] that the relationship of parent and child does not exist; or

1 (4) a determination that the parent has irrevocably waived parental rights by failing to timely act
2 to protect the rights.

3
4 **NEW SECTION. Section 71. Finding of unfitness.** (1) The court may terminate parental rights for
5 purposes of making a child available for adoption on the grounds of unfitness if:

6 (a) the court makes a determination that the parent has been judicially deprived of custody of the
7 child on account of abuse or neglect toward the child;

8 (b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully
9 abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United
10 States;

11 (c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the
12 support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

13 (d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to
14 support either the child that is the subject of the adoption proceedings or other children with the same birth
15 mother;

16 (e) the parent has been found guilty by a court of competent jurisdiction of:

17 (i) aggravated assault on the adoptee, as provided in 45-5-202;

18 (ii) sexual assault on a child, as provided in 45-5-502;

19 (iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

20 (iv) incest, as provided in 45-5-507, if the victim was a child;

21 (v) homicide of a child, as provided in 45-5-102 or 45-5-103;

22 (vi) sexual abuse of a child, as provided in 45-5-625; or

23 (vii) ritual abuse of a minor, as provided in 45-5-627;

24 (f) the child has been maintained by a public or private children's institution, a charitable agency,
25 a licensed child-placing agency, or the department for a period of 1 year without the parent contributing
26 to the support of the child during that period, if able;

27 (g) a finding is made for a parent who is given proper notice of hearing:

28 (i) that the parent has been convicted of a crime of violence or of violating a restraining or
29 protective order; and

30 (ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to

1 maintain a relationship of parent and child with the child;

2 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the
3 petition to terminate parental rights and:

4 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the
5 child; and

6 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

7 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is
8 not able or willing to promptly assume legal and physical custody of the child and to pay for the child's
9 support in accordance with the respondent's financial means;

10 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
11 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain
12 contact with the child and to pay for the child's support in accordance with the respondent's financial
13 means;

14 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial
15 harm to the physical or psychological well-being of the child because the circumstances of the child's
16 conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the
17 respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a
18 relationship of parent and child with the child; or

19 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

20 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant
21 factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the
22 role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability
23 to care for the child, the age of the child, the quality of any previous relationship between the respondent
24 and the child and between the respondent and any other children, the duration and suitability of the child's
25 present custodial environment, and the effect of a change of physical custody on the child.

26
27 **NEW SECTION. Section 72. Determination that no parent and child relationship exists.** For
28 purposes of making a child available for adoption, the court may terminate the parental rights of a putative
29 father on the grounds that the parent and child relationship does not exist if:

30 (1) a judicial determination is made under 40-6-107 that the parent and child relationship does not

exist. This includes the termination of the parental rights of the husband of the mother who is placing the child for adoption or the parental rights of an individual who is a presumed father of the child.

(2) a determination is made that:

(a) an individual has not timely registered with the putative father registry; and

(B) A PERSON HAS NOT BEEN ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD FOR THE PURPOSE OF CHILD SUPPORT;

(C) A PERSON HAS NOT BEEN RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S FATHER;

(D) A PERSON IS NOT OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF AN AUTHORIZED AGENCY AND A PERSON IS NOT REPRESENTING TO THE PUBLIC THAT THE PERSON IS THE CHILD'S FATHER; OR

~~(b)(E)~~ the child's mother was not married at the probable time of the child's conception or at the time the child was born; or

(3) a putative father who ~~timely registered with the putative father registry~~ appears at the hearing but is unable to establish by a preponderance of the evidence the minimum requirements provided in [section 73] for demonstrating the establishment of a substantial relationship with the child.

NEW SECTION. Section 73. Putative father -- termination based upon failure to establish substantial relationship. (1) The parental rights of a putative father may be terminated by the court if the putative father has failed to timely establish and maintain a substantial relationship with the child.

(2) A putative father who is not married to the child's mother but who has openly lived with the child SINCE THE CHILD'S BIRTH OR for a period of 6 months immediately preceding placement of the child with adoptive parents and has openly claimed to be the father of the child during that period is considered to have developed a substantial relationship with the child and to have otherwise met the requirements of this section.

(3) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding ~~occurring more than 6 months after the child's birth~~, a putative father has the burden of showing that the putative father has:

(a) demonstrated a full commitment to the responsibilities of parenthood, ~~when not prevented from~~

1 ~~doing so by the person or authorized agency having lawful custody of the child~~, by providing financial
2 support for the child in a fair and reasonable sum and in accordance with the putative father's ability and
3 either:

4 (i) visiting the child at least monthly when physically and financially able to do so; or

5 (ii) having regular contact with the child or with the person or agency having the care and custody
6 of the child when physically and financially ~~unable~~ ABLE to do so; and

7 (b) manifested an ability and willingness to assume legal and physical custody of the child if the
8 child was not in the physical custody of the other parent.

9 (4) In order to meet the minimal showing of having established a substantial relationship with
10 regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of
11 age at the time the child becomes the subject of adoption proceedings, a putative father has the burden
12 to show that:

13 (a) the putative father has manifested a full commitment to parental responsibilities by performing
14 all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and
15 consent for adoption, including registering with the putative father registry; and

16 (b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable
17 amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with
18 the putative father's means when not prevented from doing so by the person or authorized agency having
19 lawful custody of the child;

20 (c) making reasonable and consistent payments, in accordance with the putative father's means,
21 for the support of the child since birth;

22 (d) visiting regularly with the child; and

23 (e) manifesting an ability and willingness to assume legal and physical custody of the child if,
24 during this time, the child was not in the physical custody of the mother.

25 (5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by
26 evidence of acts specified in this section does not preclude a determination that the father failed to meet
27 the requirements of this section.

28
29 **NEW SECTION. Section 74. Irrevocable waiver of parental rights.** (1) The court may find an
30 irrevocable waiver of parental rights of:

1 (a) a putative father who was timely served with notice of intent to release if the court is provided
2 with proof of service and proof that the putative father failed to timely file a notice of intent to claim
3 paternity;

4 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
5 hearing; or

6 (c) a parent or putative father who is served with notice of proceedings and appears and denies
7 any interest in custody of the child.

8 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
9 of all rights to the child.

10
11 **NEW SECTION. Section 75. Irrevocable waiver of parental rights.** (1) The court may find an
12 irrevocable waiver of parental rights of:

13 (a) a putative father who was timely served with notice of intent to release if the court is provided
14 with proof of service and proof that the putative father failed to timely comply with the requirements of the
15 putative father registry;

16 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
17 hearing; or

18 (c) a parent or putative father who is served with notice of proceedings and appears and denies
19 any interest in custody of the child.

20 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
21 of all rights to the child.

22
23 **NEW SECTION. Section 76. Appearance of parent at hearing -- determination of custody.** (1) If
24 a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of
25 rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete
26 discovery and shall set a hearing on the determination of the parent's rights to the child.

27 (2) At the hearing, the court shall consider whether there is a basis for terminating parental rights
28 and whether the best interests of the child will be served by granting custody to the respondent parent,
29 the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental
30 placement adoption.

(3) If the petitioner has established that there are grounds for terminating parental rights and it is in the best interests of the child for termination to occur, those rights must be terminated.

NEW SECTION. Section 77. Effect of order terminating parental rights. (1) An order granting the petition for termination of parental rights:

~~(1)(A)~~ terminates the parent and child relationship except for an obligation for arrearages of child support;

~~(2)(B)~~ terminates the jurisdiction of the court over the child in any dissolution or separate maintenance action;

~~(3)(C)~~ extinguishes any right the parent had to withhold consent to a proposed adoption of the child or to further notice of a proceeding for adoption; and

~~(4)(D)~~ awards custody of the child to the department, agency, or prospective adoptive parent to whom the relinquishment was given if the department, agency, or prospective adoptive parent has agreed in writing to accept custody of the child until the adoption is finalized.

(2) A PERSON ACCEPTING CUSTODY IS RESPONSIBLE FOR THE SUPPORT OF THE CHILD.

NEW SECTION. Section 78. Appeal. An order terminating parental rights is a final order for purposes of appeal.

NEW SECTION. Section 79. Expediency. A contested termination of parental rights action must take precedence over other cases and matters in the court or on appeal. The court shall examine any issues raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final adoption decree and shall render a decision as soon as possible.

NEW SECTION. Section 80. Finality. Subject to the disposition of a timely appeal, upon expiration of 6 months after an order terminating parental rights has been issued, the order may not be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or the subject matter.

NEW SECTION. Section 81. Duty to disclose information -- form -- availability -- filing. (1) Except

1 for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent,
2 the department, or an agency shall provide a prospective adoptive parent with social and medical histories
3 of the birth families, including tribal affiliation, if applicable.

4 (2) In a direct parental placement adoption, the birth family social and medical histories must be
5 completed on a form provided by the department and filed with the court when the adoption petition is
6 filed.

7 (3) The department shall make a form available to agencies and court administrators for public
8 distribution.

9
10 **NEW SECTION. Section 82. Retention of disclosures.** (1) In a direct parental placement adoption,
11 the disclosures required by [section 81] must be filed with the court in support of the notice of parental
12 placement filed pursuant to [section 95] and must be permanently maintained.

13 (2) In an adoption arranged by the department or an agency, the disclosures required by [section
14 81] must be permanently maintained in the files of the department or the agency.

15
16 **NEW SECTION. Section 83. Preplacement evaluation -- timing.** (1) A child may not be placed for
17 purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement
18 evaluation completed to determine fitness and readiness as an adoptive parent.

19 (2) In a direct parental placement adoption, the placing parent must be provided with a copy of the
20 preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

21 (3) The required preplacement evaluation must provide all pertinent information pertaining to the
22 topics identified in [section 85].

23
24 **NEW SECTION. Section 84. Initiation of preplacement evaluation -- who conducts evaluation --**
25 **payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process
26 by:

27 (a) establishing a client relationship with the department or a licensed child-placing agency; or
28 (b) requesting a preplacement evaluation from either the department or a licensed child-placing
29 agency.

30 (2) The department may contract with a licensed social worker or a licensed child-placing agency

1 to conduct the evaluation.

2 (3) The prospective adoptive parent and the home of the prospective adoptive parent must be
3 studied and evaluated according to the department's or licensed child-placing agency's standards for
4 placement of a child.

5 (4) A department or agency from which an individual is seeking to adopt a child may require the
6 individual to be evaluated by its own qualified employee or independent contractor even if the individual
7 has received a favorable preplacement evaluation from another evaluator.

8 (5) Fees for the study and report are set by the entity completing them and must be paid for by
9 the prospective adoptive parent.

10
11 **NEW SECTION. Section 85. Information to be reviewed in conducting preplacement evaluation.**

12 (1) A preplacement evaluation must include a review of the following information about the prospective
13 adoptive parent:

14 (a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title
15 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over
16 the age of 13 living in the prospective home;

17 (b) medical and social history and current health;

18 (c) assessment of potential parenting skills;

19 (d) assessment of ability to provide adequate financial support for a child; and

20 (e) assessment of the level of knowledge and awareness of adoption issues, including when
21 appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

22 (2) (a) The prospective adoptive parent, the department of justice, and other state, county, and
23 local agencies, after written notice to the subject of the study, shall give the department or agency
24 completing the adoption study substantiated data pertaining to criminal convictions and any reports
25 concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

26 (b) The adoption study must also include a check of the youth court records of each person over
27 the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court
28 shall release the requested information to the agency or department completing the adoption study. The
29 study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated
30 abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member.

NEW SECTION. **Section 86. Contents of preplacement evaluation.** (1) The preplacement evaluation report must contain the following information if available:

(a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

(b) marital status and family history, including the age and location of any child of the individual and the identity of and relationship to anyone else living in the individual's household;

(c) physical and mental health and any history of abuse of alcohol or drugs;

(d) educational and employment history and any special skills;

(e) property and income, including outstanding financial obligations as indicated in a current credit report or financial statement furnished by the individual;

(f) any previous request for an evaluation or involvement in an adoptive placement and the outcome of the evaluation or placement;

(g) whether the individual has been charged with or convicted of domestic violence or has been involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition of the charges;

(h) whether the individual is subject to a court order restricting the individual's right to custody or visitation with a child;

(i) whether the individual has been convicted of a crime other than a minor traffic violation;

(j) whether the individual has located a parent interested in placing a child with the individual for adoption and, if so, a brief description of the parent and the child; and

(k) any other fact or circumstance that may be relevant in determining whether the individual is suited to be an adoptive parent, including the quality of the environment in the individual's home and the functioning of other children in the individual's household.

(2) The report must contain recommendations regarding the suitability of the subject of the study to be an adoptive parent.

(3) A preplacement evaluation is valid for 1 year following its date of completion and must be updated if there is a significant change in circumstances.

(4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive

parent must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically address the appropriateness of placing the specifically identified child or children who will be the subject of the adoption proceedings with the prospective adoptive parent.

NEW SECTION. Section 87. Recommendation. (1) An evaluator shall assess the information required by [section 85] to determine if it raises a specific concern that placement of any child or a particular child in the home of the individual would pose a significant risk of harm to the physical or psychological well-being of the child.

(2) If an evaluator determines that the information assessed does not raise a specific concern, the evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment about any factor that in the evaluator's opinion makes the individual suited in general or for a particular child.

(3) If an evaluator determines that the information assessed raises a specific concern, the evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

NEW SECTION. Section 88. Distribution of evaluation -- retention -- immunity for evaluator. (1) ~~If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the evaluator shall give the individual a signed copy of the evaluation.~~ The evaluator shall furnish a copy of the evaluation to a department, agency, or other person authorized to place a child for adoption AND, UPON PAYMENT BY THE PERSON EVALUATED OF THE COST OF THE EVALUATION SERVICES, TO THE PERSON EVALUATED.

~~(2) The evaluator shall provide a signed copy of the evaluation to the individual and to the department. The department shall permanently retain the copy of the evaluation.~~

~~(3)(2)~~ (2) An evaluator shall retain the original of a completed or incomplete preplacement evaluation and a list of each source for each item of information in the evaluation ~~for 2 years.~~ AN EVALUATOR WHO CEASES TO DO BUSINESS IN MONTANA SHALL GIVE THE EVALUATOR'S RECORDS TO THE DEPARTMENT FOR RETENTION.

~~(4)(3)~~ (3) An evaluator, EXCEPT A DEPARTMENT EVALUATOR, who conducted an evaluation in good faith is not subject to civil liability for anything contained in the evaluation.

1 **NEW SECTION. Section 89. Action by department.** If, before a decree of adoption is issued, the
2 department learns from an evaluator or another person that a child has been placed for adoption with an
3 individual who is the subject of a preplacement evaluation on file with the department containing a finding
4 of unsuitability, the department shall immediately review the evaluation and make a determination of
5 whether the department has authority pursuant to Title 41, chapter 3, to intervene.

6
7 **NEW SECTION. Section 90. Court waiver for relatives.** The court may waive the requirement of
8 a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended
9 family member of the child. A postplacement evaluation must be conducted during the pendency of a
10 proceeding for adoption.

11
12 **NEW SECTION. Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental
13 placement adoption, the preplacement evaluation must be filed with the court in support of the petition to
14 terminate parental rights for purposes of adoption.

15 (2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement
16 evaluation must be permanently maintained in the files of the department or the licensed child-placing
17 agency.

18
19 **NEW SECTION. Section 92. Requirement for preplacement evaluation.** (1) Before the department
20 or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent
21 and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

22 (2) The department or agency shall prepare a written report containing the results of its evaluation.
23

24 **NEW SECTION. Section 93. Parties to direct parental placement adoption.** A parent of a child may
25 directly place the child for adoption with a specifically identified prospective adoptive parent who:

- 26 (1) resides in Montana or in another state that allows direct parental placement;
27 (2) is known to and has been personally selected by the parent; and
28 (3) has previously obtained a favorable preplacement evaluation.

29
30 **NEW SECTION. Section 94. Duties of placing parent.** (1) A parent who is directly placing a child

for adoption shall execute a voluntary relinquishment and consent to adopt, including:

- (a) receiving the counseling required by [section 48]; and
- (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) ~~Unless a birth mother relies on the right to privacy, a~~ A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including:

- (a) any current spouse;
- (b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and
- (c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

- (a) the disclosures of medical and social history required pursuant to [section 81];
- (b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and
- (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent.

NEW SECTION. Section 95. Direct parental placement -- information to be filed. (1) A parent who

1 proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who
2 is not the child's stepparent or an extended family member shall file with the court of the county in which
3 the prospective adoptive parent or the parent making the placement resides the following:

4 (a) a notice of parental placement containing the following information:

5 (i) the name and address of the placing parent;

6 (ii) the name and address of each prospective adoptive parent;

7 (iii) the name and address or expected date and place of birth of the child;

8 (iv) the identity and information on the location of any other legal parent or guardian of the child

9 AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including any current
10 spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time
11 of conception or birth of the child, and any adoptive parent;

12 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child
13 within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

14 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each
15 of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

16 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

17 (c) the counseling report required by [section 48];

18 (d) the medical and social history disclosures required by [section 81];

19 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
20 parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement
21 by each person furnishing information in the report attesting to the truthfulness of the information furnished
22 by that person;

23 (f) a certified copy of the child's birth certificate or other document certifying the place and date
24 of the child's birth;

25 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

26 (h) the preplacement evaluation.

27 (2) The notice of parental placement must be signed by the parent making the placement.

28
29 NEW SECTION. **Section 96. Duty of prospective adoptive parent to provide preplacement**
30 **evaluation.** (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt,

the prospective adoptive parent shall obtain a favorable preplacement evaluation.

(2) A placing parent must be provided with a copy of the preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

NEW SECTION. Section 97. Duty to promptly petition. (1) Within 30 days after the filing of a notice of parental placement or the execution of a relinquishment and consent to the adoption of the child, whichever is later, a prospective adoptive parent shall promptly act to resolve the child's legal status by filing:

(a) a petition for termination of parental rights for purposes of adoption, including a request for custody, that includes:

(i) the relinquishment and consent to adopt executed by any legal parent other than the placing parent who has filed the notice of parental placement;

(ii) a certified copy of any court order terminating the rights and duties of any parent or guardian of the child; and

(iii) any other evidence supporting termination of the legal rights a person has with regard to the child;

(b) a petition to adopt the child who is the subject of the proceedings;

(c) a copy of the preplacement evaluation pertaining to the adoptive parent;

(d) a copy of an agreement with the department or a licensed child-placing agency agreeing to accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;

(e) a disclosure of all disbursements made with regard to the adoptive placement to date; and

(f) an affidavit from the department reporting on whether any individual has registered with the putative father registry and claims an interest in the child.

(2) The prospective adoptive parent shall request that the court promptly notice the matters provided for in subsection (1) for hearing in a timely manner.

NEW SECTION. Section 98. Custody order. (1) The court shall consider the petition to adopt and shall make a determination as to whether temporary custody should be awarded to the petitioner. In making that determination, the court shall consider:

(a) the preplacement evaluation that pertains specifically to placement of the child who is the

1 subject of the adoption petition with the petitioner; and

2 (b) if any significant change in the petitioner's or child's circumstances has occurred since
3 preparation of the preplacement evaluation.

4 (2) Upon a determination that it is in the best interests of the child, the court shall enter an order
5 granting temporary custody to the prospective adoptive parent.

6 (3) Upon a determination that it is not in the best interests of the child to place custody with the
7 prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing
8 parent and shall make any other order with regard to the custody of the child that is necessary to protect
9 the well-being of the child.

10
11 **NEW SECTION. Section 99. Period for postplacement supervision.** (1) In a direct parental
12 placement adoption, the court shall maintain jurisdiction over the placement during a postplacement
13 evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

14 (2) The postplacement evaluation period must be supervised and evaluated by a qualified person
15 appointed, contracted with, or employed by:

16 (a) the department, if the department has accepted supervision of the placement; or

17 (b) a licensed child-placing agency.

18 (3) The court shall provide the evaluator with copies of the petition for adoption and the items filed
19 with the petition.

20 (4) A decree of adoption may not be entered for at least 6 months from the date an order is entered
21 granting temporary custody during the pendency of the proceedings.

22
23 **NEW SECTION. Section 100. Postplacement evaluation for direct parental placement adoption.**

24 (1) An evaluation must be based on a personal interview with the prospective adoptive parent in the
25 prospective parent's home and an observation of the relationship between the child and the prospective
26 adoptive parent.

27 (2) An evaluation must be in writing.

28 (3) At a minimum, the evaluation must include the following information:

29 (a) assessment of adaptation by the prospective adoptive parent to parenting the child;

30 (b) assessment of the health and well-being of the child in the prospective adoptive home;

(c) analysis of the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community;

(d) assessment of the level of incorporation of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives; and

(e) an account of any change in the prospective adoptive parent's marital status or family history, physical or mental health, home environment, property, income, or financial obligations since the filing of the preplacement evaluation.

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

NEW SECTION. Section 101. Time and filing of evaluation. (1) Unless the court for good cause allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within not less than 90 days and not more than 180 days after receipt of the court's order for an evaluation.

(2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be filed immediately and must explain why the concern poses a significant risk of harm to the physical or psychological well-being of the child.

(3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed with the court and shall permanently retain a copy of the evaluation and a list of every source for each item of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations in the evaluator's possession must be forwarded to the department for permanent retention.

NEW SECTION. Section 102. Motion to enter adoption decree. (1) The prospective adoptive parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has granted temporary custody to the prospective adoptive parent.

(2) The motion must be supported by the following documents:

(a) the postplacement evaluation prepared pursuant to [section 100]; and

(b) an updated list of all disbursements made in connection with the adoption proceeding.

(3) A notice of hearing is not required for any party whose parental rights have been terminated in prior proceedings.

1 (4) The court shall consider the petition and shall grant or deny the petition pursuant to the
2 provisions of [sections 125 through 134].

3 (5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the
4 petition has been denied and shall take appropriate action for placement of the child pursuant to [section
5 131].

6 (6) Finality of the decree or the order denying the decree and the time for appeal are determined
7 pursuant to [section 137].
8

9 **NEW SECTION. Section 103. Records.** All records filed with the court in a direct parental
10 placement adoption must be permanently maintained by the court.
11

12 **NEW SECTION. Section 104. Factors to be considered -- best interests of child.** (1) All relevant
13 factors must be considered in determining the best interests of the child in an adoption proceeding. Factors
14 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a
15 child, and familial stability must be considered. In determining the best interests of the child, the following
16 factors with regard to a prospective adoptive parent may be considered:

17 (a) age, as it relates to health, earning capacity, provisions for the support of a child, or other
18 relevant circumstances;

19 (b) marital status, as it relates to the ability to serve as a parent in particularized circumstances;
20 and

21 (c) religion, as it relates to the ability to provide the child with an opportunity for religious or
22 spiritual and ethical development and as it relates to the express preference of a birth parent or a child to
23 be placed with an adoptive parent of a particular religious faith or denomination.

24 (2) For purposes of ensuring that the best interests of the child are met, the department or a
25 licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner,
26 information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The
27 authority granted by this subsection includes the authority to receive and to consider, consistent with the
28 best interests of the child, the preferences of birth parents relating to the age, marital status, or religious
29 beliefs of an adoptive parent.

30 (3) Consideration of religious factors by a licensed child-placing agency that is affiliated with a

particular religious faith is not arbitrary consideration of religion within the meaning of this section.

NEW SECTION. Section 105. Parties to department or agency placement. A parent of a child may relinquish the child for adoption to the department or a licensed child-placing agency. The department or agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43] before the relinquishment is valid.

NEW SECTION. Section 106. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

(2) A parent placing a child for adoption shall identify and provide information on the location of:

(a) any other legal parent or guardian of the child AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including any current spouse; and

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.

(3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption shall provide:

(a) the disclosures of medical and social history;

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

NEW SECTION. Section 107. Counseling requirements. To the extent required by [sections 1 through 156] and the department's or agency's standards, the department or agency shall provide counseling to the parties involved in the adoption.

NEW SECTION. Section 108. Waiting period following placement of child. (1) Once the department or agency has received custody of the child and placed the child for adoption, the department or agency shall supervise and evaluate the placement during a 6-month postplacement evaluation period.

(2) The department or agency may recommend in the postplacement evaluation filed with the petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement evaluation period if:

(a) (i) a period of at least 6 months has elapsed since the department or agency placed the child in the prospective adoptive home; and

(ii) the department or agency has completed a postplacement evaluation during that period; or

(b) (i) a postplacement evaluation has been completed and filed with the court; and

(ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement evaluation period.

(3) The department or an agency may recommend the waiver of the 6-month postplacement evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a foster child for at least 1 year.

NEW SECTION. Section 109. Petition for adoption filed by prospective adoptive parent. After the child has been placed by the department or agency with the prospective adoptive parent, the parent shall file a petition for adoption.

NEW SECTION. Section 110. Postplacement department or agency evaluation. (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospective adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is suitable for the child;

(c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;

(d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

(e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;

(f) any other circumstances and conditions that may have a bearing on the adoption and of which the court should have knowledge;

(g) whether the agency waives notice of the proceeding;

(h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and

(i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

NEW SECTION. Section 111. Consent to adoption. (1) Upon the filing of the petition for adoption by the prospective adoptive parent, the department or agency that has custody of the child shall file its consent to adoption.

(2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the department or an agency in connection with that petition for adoption is not permitted.

(3) Upon a motion to withdraw consent, notice and opportunity to be heard must be given to the petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests of the child will be furthered, issue a written order permitting the withdrawal of the consent.

(4) The entry of a decree of adoption renders a consent irrevocable.

NEW SECTION. Section 112. Relinquishment to stepparent. (1) A parent may relinquish parental rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended family. The relinquishment must be executed in accordance with [sections 42 through 52]. The relinquishment may be executed at any time after the child is 72 hours old.

(2) The stepparent or extended family member shall accept the relinquishment in writing.

NEW SECTION. Section 113. Standing to adopt stepchild. (1) A stepparent has standing to file a petition for adoption of a minor stepchild of the stepparent's spouse if:

1 (a) the spouse has sole legal and physical custody of the child and the child has been in the
2 physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for
3 adoption;

4 (b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared
5 mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with
6 the stepparent during the 12 months preceding the filing of the petition; or

7 (c) the department or an agency placed the child with the stepparent.

8 (2) For good cause shown, a court may allow an individual who is not the stepparent but who has
9 the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated
10 as if the petitioner were a stepparent.

11 (3) A petition for adoption by a stepparent may be joined with a petition for termination of parental
12 rights.

13
14 **NEW SECTION. Section 114. Consent to adoption.** (1) Upon the filing of the petition for adoption
15 by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or
16 116].

17 (2) If the child has attained 12 years of age the child must consent to the adoption.
18

19 **NEW SECTION. Section 115. Consent to adoption -- stepparent's spouse.** (1) A consent to
20 adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an
21 individual authorized to take acknowledgements.

22 (2) A consent must be in writing and must state that:

23 (a) the parent executing the consent has legal and physical custody of the parent's child and
24 voluntarily and unequivocally consents to the adoption of the child by the stepparent;

25 (b) the adoption will not terminate the parental relationship between the parent executing the
26 consent and the child; and

27 (c) the parent executing the consent understands and agrees that:

28 (i) the adoption will terminate the relationship of parent and child between the child's other parent
29 and the child and will terminate any existing court order for custody, visitation, or communication with the
30 child;

(ii) the child and any descendant of the child will retain rights of inheritance from or through the child's other parent; and

(iii) a court order for visitation or communication with the child by an individual related to the child through the parent executing the consent or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

NEW SECTION. Section 116. Consent to adoption -- child's other parent. A consent executed by a child's parent who is not the stepparent's spouse must be in writing and must state that:

(1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right that the parent executing the consent has to legal or physical custody of the child;

(2) the parent executing the consent understands and agrees that:

(a) the adoption will terminate the parent's parental relationship with the child and will terminate any existing court order for custody, visitation, or communication with the child;

(b) the child and any descendant of the child will retain rights of inheritance from or through the parent executing the consent; and

(c) a court order for visitation or communication with the child by an individual related to the child through the child's other parent or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

NEW SECTION. Section 117. Postplacement evaluation period -- waiver. If the child is a stepchild or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the best interests of the child, waive the 6-month postplacement evaluation period and the postplacement evaluation and grant a decree of adoption.

NEW SECTION. Section 118. Petition for adoption -- notice -- hearing. A stepparent who desires to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement evaluation, give notice of the hearing on the petition, and attend a hearing conducted by the court.

1 **NEW SECTION. Section 119. Legal consequences of adoption of stepchild.** (1) Except as
2 provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent
3 are the same as the consequences under [section 136].

4 (2) An adoption by a stepparent does not affect:

5 (a) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's
6 spouse or deceased spouse;

7 (b) an existing court order for visitation or communication with a child by an individual related to
8 the adoptee through either parent; or

9 (c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession
10 through or from the adoptee's former parent.

11 (3) Failure to comply with an agreement or order is not a ground for challenging the validity of an
12 adoption by a stepparent.

13
14 **NEW SECTION. Section 120. Arrearages of child support.** A termination of a parent's rights and
15 responsibilities toward a child does not cancel any responsibility to pay arrearages of child support unless
16 the party to whom the arrearages are owed agrees in writing to waive payment.

17
18 **NEW SECTION. Section 121. Adoption of adult.** A person who has attained the age of legal
19 majority may be adopted without the consent of the person's parents.

20
21 **NEW SECTION. Section 122. Who may adopt adult or emancipated minor.** (1) An adult may
22 adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt
23 the adult's spouse. An adoption of an incompetent individual of any age must comply with all requirements
24 set by law for the adoption of a child.

25 (2) An individual who has adopted an adult or emancipated minor may not adopt another adult or
26 emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the
27 adoptee.

28
29 **NEW SECTION. Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or
30 emancipated minor is required only of:

1 (a) the adoptee;

2 (b) the prospective adoptive parent; and

3 (c) the spouse of the prospective adoptive parent unless:

4 (i) the spouse and the prospective adoptive parent are legally separated; or

5 (ii) the court finds that the spouse is not capable of giving consent or is withholding consent
6 contrary to the best interests of the adoptee and the prospective adoptive parent.

7 (2) The consent of the adoptee and the prospective adoptive parent must:

8 (a) be in writing and be signed in the presence of the court or an individual authorized to take
9 acknowledgments;

10 (b) state that the parties agree to assume toward each other the legal relationship of parent and
11 child and to have all of the rights and be subject to all of the duties of that relationship; and

12 (c) state that the parties understand the consequences that the adoption may have for any right
13 of inheritance, property, or support.

14 (3) The consent of the spouse of the prospective adoptive parent:

15 (a) must be in writing and be signed in the presence of the court or an individual authorized to take
16 acknowledgments;

17 (b) must state that the spouse:

18 (i) consents to the proposed adoption; and

19 (ii) understands the consequences that the adoption may have for any right of inheritance,
20 property, or support that the spouse has; and

21 (c) may contain a waiver OF NOTICE of any proceeding for adoption.

22
23 **NEW SECTION. Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a
24 proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at
25 least 90 days immediately preceding the filing of a petition for adoption.

26 (2) A petition for adoption ~~may~~ **MUST** be filed in the court in the county in which a petitioner lives.

27
28 **NEW SECTION. Section 125. Procedure.** Except as otherwise provided in [sections 121 through
29 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in
30 proceedings for the adoption of an adult. The provisions concerning the counseling requirement,

1 preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable
2 to the adoption of an adult.

3
4 **NEW SECTION. Section 126. Petition for adoption.** (1) A petition for adoption must be filed in
5 triplicate, must be notarized by the petitioners, and must specify:

- 6 (a) the full names, ages, and place and duration of residence of the petitioners;
7 (b) the current marital status of petitioners and, if married, the place and date of the marriage;
8 (c) the circumstances under which the petitioners obtained physical custody of the child and the
9 name of the individual or agency who placed the child;
10 (d) the date and place of birth of the child, if known;
11 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
12 by which the child is to be known;
13 (f) that it is the desire of the petitioners that the relationship of parent and child be established
14 between the petitioners and the child and to have all the rights and be subject to all the duties of that
15 relationship;
16 (g) a full description and statement of value of all property owned or possessed by the child;
17 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
18 adoption;
19 (i) that any applicable law governing interstate or intercountry placement was complied with;
20 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;
21 (k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other
22 child in any court and the disposition of the petitions; and
23 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
24 for adoption.

- 25 (2) There must be attached to or accompanying the petition:
26 (a) any written consent required by [sections 125 through 134];
27 (b) a certified copy of any court order terminating the rights of the child's parents;
28 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
29 or visitation with the child;
30 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child.

1 with a special need;

2 (e) the postplacement evaluation prepared pursuant to [section 100 or 110];

3 (f) a disclosure of any disbursements made in connection with the adoption proceeding.

4 (3) One copy of the petition must be retained by the court. A copy must be sent to:

5 (a) the department or to the agency participating in the adoption proceeding; ~~and~~ OR

6 (b) the parent placing the child for adoption in a direct parental placement adoption.

7
8 **NEW SECTION. Section 127. Time for action on petition for adoption -- waiver.** Not less than 6
9 months from the date the child has been placed with the prospective adoptive parent, the prospective
10 adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are
11 served, THEN PURSUANT TO [SECTIONS 108 AND 117], the court may waive the 6-month postplacement
12 evaluation period and summarily consider an adoption petition.

13
14 **NEW SECTION. Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption,
15 notice of hearing must be served on:

16 (a) a person whose consent to adoption is required under [section 39];

17 (b) the department or agency whose consent to adoption is required;

18 (c) the spouse of the petitioner if the spouse has not joined in the petition;

19 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
20 relinquishment set aside; and

21 (e) any other person named by the court to receive notice.

22 (2) The notice must direct the person to appear in court at the time specified and to show cause
23 why the petition should not be granted.

24 (3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
25 Procedure.

26 (4) A notice of hearing is not required to be served on any party:

27 (a) whose parental rights have been terminated in prior proceedings;

28 (b) who waives notice in a relinquishment, consent, or other document signed by the party;

29 (c) who has consented in writing to an adoption; or

30 (d) whose consent to adoption is not required under [section 40].

1 **NEW SECTION. Section 129. Content of notice.** The notice required by [section 128] must
2 contain:

- 3 (1) the caption of the petition;
- 4 (2) the address and telephone number of the court in which the petition is pending;
- 5 (3) a concise summary of the relief requested in the petition;
- 6 (4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney;
- 7 and
- 8 (5) a statement of the method of responding to the notice and the consequences of failure to
9 respond.

10

11 **NEW SECTION. Section 130. Hearing on petition for adoption.** (1) The petitioners and the child
12 shall appear at the hearing unless the presence of the child is waived by the court.

13 (2) The court shall examine the petition, the documents accompanying the petition, and the
14 petitioners and shall receive evidence in support of the petition.

15

16 **NEW SECTION. Section 131. Granting petition for adoption -- denial of petition.** (1) The court
17 shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence
18 received if it determines that:

19 (a) the child has been in the physical custody of the petitioners for at least 6 months; unless the
20 court for good cause shown waives this requirement pursuant to [section 108 or 117];

21 (b) notice of hearing on the petition for adoption was properly served or dispensed with;

22 (c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating
23 parental rights has been obtained and filed with the court;

24 (d) any evaluation required by [sections 1 through 156] has been filed with and considered by the
25 court; and

26 (e) the adoption is in the best interests of the child.

27 (2) If the petition for adoption is denied, the court shall dismiss the petition and enter an
28 appropriate order as to the future custody of the child according to the best interests of the child.

29

30 **NEW SECTION. Section 132. Best interests of child.** (1) In determining whether to grant a

petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

(a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;

(b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;

(c) the harm that could result to the child from a change in placement;

(d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

(e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., have been met.

NEW SECTION. Section 133. Removal of child from state. Before a decree of adoption is issued, a petitioner may not remove the child from the state for more than 30 consecutive days without the permission of:

(1) the court if the child was placed directly for adoption; or

(2) the department or the agency that placed the child for adoption.

NEW SECTION. Section 134. Decree of adoption. A decree of adoption must state:

(1) the original name of the child;

(2) the name of the petitioner for adoption;

(3) whether the petitioner is married or unmarried;

(4) whether the petitioner is a stepparent of the child;

(5) the name by which the child is to be known;

(6) **FOR A CHILD BORN IN MONTANA,** a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

- 1 (7) the child's date and place of birth, if known;
2 (8) the effect of the decree of adoption as stated in [section 136];
3 (9) that the adoption is in the best interests of the child; and
4 (10) whether the birth mother objects to the release of the original birth certificate information upon
5 the adoptee reaching 18 years of age.

6
7 **NEW SECTION. Section 135. Communication of decree to department.** (1) Within 30 days after
8 a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

9 (2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new
10 birth certificate to the child.

11
12 **NEW SECTION. Section 136. Effect of decree.** (1) After the decree of adoption is entered:

13 (a) the relationship of parent and child and all the rights, duties, and other legal consequences of
14 the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the
15 adoptive parent;

16 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the
17 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
18 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
19 support.

20 ~~(2) A decree of adoption is not subject to a challenge after the decree is issued.~~

21 ~~(3)~~(2) A decree of adoption should include a notice to the vital statistics bureau as to the birth
22 mother's consent to release of the information on the original birth certificate upon the adoptee reaching
23 18 years of age.

24 ~~(4)~~(3) The relationship of parent and child for the purposes of intestate succession is governed by
25 Title 72.

26
27 **NEW SECTION. Section 137. Finality of decree -- expediency.** (1) For purposes of appeal, the
28 decree of adoption is a final order when it is issued.

29 (2) A person may appeal from the order in the manner and form provided for appeals from a
30 judgment in civil actions.

1 (3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions
2 of [section 78].
3

4 NEW SECTION. Section 138. Rights of adoptee. A decree of adoption does not affect any right
5 or benefit vested in the adoptee before the decree became final.
6

7 NEW SECTION. Section 139. Foreign adoption decrees. When the relationship of parent and child
8 has been created by a decree of adoption of a court of any other state or country, the rights and obligations
9 of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections
10 1 through 156].
11

12 NEW SECTION. Section 140. Visitation and communication agreements. (1) Except as otherwise
13 provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral
14 agreement for contact or communication between the adoptee and the birth parents or family.
15

16 (2) Any express written agreement entered into between the placing parent and the prospective
17 adoptive parent after the execution of a relinquishment and consent to adoption is independent of the
18 adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the
19 agreement for contact or communication is later performed. Failure to perform an agreement is not grounds
20 for setting aside an adoption decree.

21 (3) A court may order that an agreement for contact or communication entered into under this
22 section may not be enforced upon a finding that:

- 23 (a) enforcement is detrimental to the child;
24 (b) enforcement undermines the adoptive parent's parental authority; or
25 (c) due to a change in circumstances, compliance with the agreement would be unduly burdensome
26 to one or more of the parties.

27 NEW SECTION. Section 141. Confidentiality of records and proceedings. (1) Unless the court
28 orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must
29 be held in closed court without admittance of any person other than interested parties and their counsel.
30

(2) All papers and records pertaining to the adoption must be kept as a permanent record of the

1 court and must be withheld from inspection. A person may not have access to the records, except:

2 (a) for good cause shown on order of the judge of the court in which the decree of adoption was
3 entered;

4 (b) as provided in [sections 141 through 146];

5 (c) as provided in 50-15-121 and 50-15-122-; OR

6 (D) THE DEPARTMENT'S CHILD SUPPORT ENFORCEMENT DIVISION PROVIDING SERVICES
7 UNDER 42 U.S.C. 651, ET SEQ.

8 (3) All files and records pertaining to adoption proceedings retained by the department, a licensed
9 child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from
10 inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

11
12 NEW SECTION. Section 142. Disclosure of records -- nonidentifying information -- consensual
13 release. (1) The department or authorized person or agency may disclose:

14 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family
15 member of an adoptee or birth parent; and

16 (b) identifying information to a court-appointed confidential intermediary upon order of the court
17 or as provided in 50-15-121 and 50-15-122.

18 (2) Information may be disclosed to any person who consents in writing to the release of
19 confidential information to other interested persons who have also consented. Identifying information
20 pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a
21 consensual exchange of information unless the adoptee's adoptive parent consents in writing.

22
23 NEW SECTION. Section 143. Petition for appointment of confidential intermediary. (1) An adult
24 adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent
25 may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth
26 parent, or an extended family member.

27 (2) A petition for disclosure must contain:

28 (a) as much of the following information as is known by the petitioner:

29 (i) the name, address, and identification of the petitioner;

30 (ii) the date of the adoptee's birth;

1 (iii) the county and state where the adoption occurred;

2 (iv) the date of the adoption; and

3 (v) any other information known to the petitioner concerning the birth parents, the adoptive parent,
4 and the adoptee that could assist in locating the person being sought;

5 (b) written documentation from a certified confidential intermediary agreeing to conduct the search;
6 and

7 (c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the
8 appointment of a confidential intermediary.

9
10 **NEW SECTION. Section 144. Appointment of confidential intermediary -- duties -- payment.** (1)

11 After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential
12 intermediary who shall:

13 (a) conduct a confidential search for the person sought as requested in the petition for disclosure;

14 (b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless
15 ordered to do so by the court; and

16 (c) make a written report of the results of the search to the court not later than 6 months after
17 appointment.

18 (2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual
19 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

20 (3) A confidential intermediary may inspect otherwise confidential records of the court, the
21 department, or an authorized agency for use in the search. The confidential intermediary may not disclose
22 identifying information from the records or any results of a search unless authorized by the court or unless
23 the parties have executed written consent to the confidential intermediary. Nonidentifying information from
24 any source may be disclosed without further order from the court.

25 (4) If a confidential intermediary locates the person being sought, a confidential inquiry must be
26 made as to whether the located person consents to having that person's present identity disclosed to the
27 petitioner. The court may request that the confidential intermediary assist in arranging contact between the
28 petitioner and the located person.

29 (5) If a confidential intermediary locates the person being sought and the located person does not
30 consent to having that person's identity disclosed, identifying information regarding that person may be

disclosed only upon order of the court for good cause shown.

(6) If the person being sought is found to be deceased, the court may order disclosure of identifying information regarding the deceased to the petitioner.

NEW SECTION. Section 145. Disclosure authorized in course of employment. [Sections 1 through 156] do not preclude an employee or agent of a court, department, or agency from:

(1) inspecting permanent, confidential, or sealed records for the purpose of discharging any obligation under [sections 1 through 156];

(2) disclosing the name of the court in which a proceeding for adoption occurred or the name of an agency that placed an adoptee to an individual described in [section 143(1)] who can verify the individual's identity; or

(3) disclosing nonidentifying information contained in confidential or sealed records in accordance with any other applicable state or federal law.

NEW SECTION. Section 146. Release of original birth certificate -- certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after [the effective date of this section], in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after [the effective date of this section] and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, ~~the clerk of~~

1 ~~the court that entered a decree of adoption~~ THE DEPARTMENT shall issue a certificate of adoption that
2 states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent,
3 and the name of the adoptee as provided in the decree.

4 (5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for
5 an adoptee not be released without a court order.

6
7 NEW SECTION. Section 147. Fees related to placement for adoption by parent. (1) Reasonable
8 adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must
9 relate to:

- 10 (a) a petition for adoption;
- 11 (b) placement of a child;
- 12 (c) medical care or services;
- 13 (d) prenatal care;
- 14 (e) foster care;
- 15 (f) a preplacement evaluation;
- 16 (g) counseling related to providing information necessary to make an informed decision to
17 voluntarily relinquish a child;
- 18 (h) travel or temporary living costs for the birth mother;
- 19 (i) legal fees incurred for services on behalf of the placing parent;
- 20 (j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to
21 document the disclosures of medical and social history required by [section 81]; and
- 22 (k) other reasonable costs related to adoption that do not include education, vehicles, salary or
23 wages, vacations, or permanent housing for the birth parent.

24 (2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a
25 payment authorized by subsection (1). The payment may not be made contingent on the placement of a
26 child for adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not
27 completed, a person who is authorized by subsection (1) to make a specific payment is not liable for that
28 payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to
29 make the payment regardless of the outcome of the proceeding for adoption.

1 **NEW SECTION. Section 148. Limitations on payment of counseling and legal fees.** (1) A

2 prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

3 (2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for
4 one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to
5 legal counsel paid by the prospective adoptive parent continues only until the relinquishment becomes
6 irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

7
8 **NEW SECTION. Section 149. Prohibited activities -- violations -- penalties.** (1) A person, other

9 than the department or a licensed child-placing agency, may not:

10 (a) advertise in any public medium that the person:

11 (i) knows of a child who is available for adoption; or

12 (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child;

13 or

14 (b) engage in placement activities as defined in [section 151].

15 (2) An individual other than an extended family member or stepparent of a child may not obtain
16 legal or physical custody of a child for purposes of adoption unless the individual has a favorable
17 preplacement evaluation or a court-ordered waiver of the evaluation.

18 (3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a
19 child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person,
20 either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense
21 of paying or charging excessive adoption process fees.

22 (4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under
23 [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this
24 section are considered a gift to the birth parent.

25 (5) A person convicted of the offense of paying or charging excessive adoption process fees,
26 attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1
27 through 156] may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city
28 or county attorney. The court may also enjoin from further violations any person who violates [sections
29 1 through 156].

NEW SECTION. Section 150. Action by department. The department may review and investigate compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

NEW SECTION. Section 151. Definitions. As used in [sections 151 through 156], the following definitions apply:

- (1) "Person" includes any individual, partnership, voluntary association, or corporation.
- (2) "Placement activities" means any of the following:
 - (a) placement of a child for adoption;
 - (b) arranging or providing short-term foster care for a child pending an adoptive placement; or
 - (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective adoptive parents.
- (3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent or parents, or placement of a child by a birth parent.

NEW SECTION. Section 152. General duties of department. The department shall:

- (1) issue licenses to entities engaged in child placement activities on [the effective date of this section] if the licensed applicant has met the requirements established by the department by rule;
- (2) prescribe the conditions upon which child-placing licenses are issued and revoked; and
- (3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the welfare of children.

NEW SECTION. Section 153. License required -- term of license -- no fee charged. (1) Only an entity holding a current child-placing agency license issued by the department may act as an agency for the purpose of:

- (a) procuring or selecting proposed adoptive homes;
- (b) placing children in proposed adoptive homes;
- (c) soliciting persons to adopt children or arranging for persons to adopt children;
- (d) soliciting persons to relinquish children or place children in potential adoptive homes; or
- (e) engaging in placement activities.

(2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

NEW SECTION. Section 154. Requirements for licensure. The department may issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency or a specific program within the agency must be the care and placement of children.

(2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

(3) The agency meets the requirements as designated by the department by rule.

(4) The directing or managing personnel of the agency must be qualified both on the basis of professional educational experience and character.

(5) Complete records must be kept of both the children and adopting parents with which the agency deals, and the records must be maintained in accordance with [section 141].

(6) The agency shall maintain and use an in-state office for making a social study of the child and proposed adoptive parent before placement of the child, particularly with regard to:

(a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare; and

(b) the physical and mental condition of the child and the child's family background.

(7) The agency must have the ability to provide education for adoptive parents and counseling for placing parents as required in [section 48] and department rules.

(8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with other public agencies having to deal with the welfare of children.

(9) The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year.

NEW SECTION. Section 155. Investigation of agencies -- cancellation of licenses. (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by [section 154(9)] or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency.

NEW SECTION. Section 156. Violation a misdemeanor -- penalty. (1) Any person who maintains or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction of a first offense shall be punished by a fine not exceeding \$1,000 or imprisonment for up to 1 year in jail and shall be enjoined from further engaging in agency activities.

(2) Upon the second conviction of a person for violation of [sections 153 through 155], the person is guilty of a felony and may be punished by a fine not exceeding \$10,000 or imprisonment for up to 5 years in prison and shall be enjoined from further engaging in agency activities.

Section 157. Section 2-6-104, MCA, is amended to read:

"2-6-104. Records of officers open to public inspection. Except as provided in ~~40-8-126~~ and ~~27-18-111~~ and [section 141], the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person."

Section 158. Section 2-18-606, MCA, is amended to read:

"2-18-606. Parental leave for state employees. (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or placement of a child, for a period not to exceed 15 working days if:

- (a) the employee is adopting a child; or
- (b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103~~ 33-22-130."

Section 159. Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
2 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
3 without the need for a biennial legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
5 with both of the following provisions:

6 (a) The law containing the statutory authority must be listed in subsection (3).

7 (b) The law or portion of the law making a statutory appropriation must specifically state that a
8 statutory appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
10 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
11 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
12 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
13 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
14 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
15 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
16 39-71-907; 39-71-2321; 39-71-2504; [section 16]; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
17 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
18 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
19 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

20 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
21 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
22 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
23 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
24 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
25 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
26 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
27 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
28 July 1, 2001.)"

29
30 **Section 160.** Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, a fee of \$120; and for filing a petition for legal separation, a fee of \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$30;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining

1 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

2 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
3 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
4 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
5 deposited as provided in 19-5-404.

6 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
7 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
8 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
9 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
10 be deposited in the general fund for district court operations.

11 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
12 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
13 deduct from the following fees the amounts indicated:

14 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
15 provided in subsection (1)(a), \$35;

16 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

17 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

18 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
19 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
20 provided in subsection (1)(m), \$15.

21 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
22 county general fund for district court operations unless the county has a district court fund. If the county
23 has a district court fund, the money must be deposited in that fund.

24 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
25 remitted to the state to be deposited as provided in 19-5-404.

26 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
27 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

28 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
29 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
30 judicial salaries.

(9) The clerk of district court shall remit to the credit of the special revenue account established in [section 16] \$70 of the filing fee required in subsection (1)(g), AND \$5 OF THE FILING FEE MUST BE DEPOSITED IN THE DISTRICT COURT FUND. IF NO DISTRICT COURT FUND EXISTS, FEES MUST BE DEPOSITED IN THE GENERAL FUND FOR DISTRICT COURT OPERATIONS."

Section 161. Section 33-22-130, MCA, is amended to read:

"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1)

Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ the transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the child."

Section 162. Section 33-30-1016, MCA, is amended to read:

"33-30-1016. Coverage for adopted children from time of placement -- preexisting conditions. (1)

Each individual or group membership contract issued or amended by a health service corporation in this state that provides coverage of dependent children of a member must provide coverage for an adopted child of the member to the same extent as for natural children of the member.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined in 40-8-103 33-22-130."

1 **Section 163.** Section 33-31-114, MCA, is amended to read:

2 **"33-31-114. Coverage for adopted children from time of placement -- preexisting conditions.** (1)

3 Each health maintenance contract regulated under this chapter must provide coverage for an adopted child
4 of the enrollee to the same extent as for natural children of the enrollee.

5 (2) The coverage required by this section must be effective from the date of placement for the
6 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
7 child is removed from placement. Coverage at the time of placement must include the necessary care and
8 treatment of medical conditions existing prior to the date of placement.

9 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
10 in ~~40-8-103~~ 33-22-130."

11
12 **Section 164.** Section 37-60-301, MCA, is amended to read:

13 **"37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person
14 to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary
15 security organization, a private investigator, or a private security guard without having first obtained a
16 license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status
17 and shall renew their licenses on the renewal date as prescribed by the department.

18 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
19 the person is licensed as a private investigator, a contract security company, a proprietary security
20 organization, or a private security guard.

21 (3) A person appointed by the court as a confidential intermediary under [section 144] is not
22 required to be licensed under this chapter. A person who is licensed under this chapter is not authorized
23 to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section
24 144].

25 ~~(3)(4)~~ (4) A person who knowingly engages an unlicensed private investigator, private security guard,
26 or contract security company is guilty of a misdemeanor punishable under 37-60-411."

27
28 **Section 165.** Section 40-6-108, MCA, is amended to read:

29 **"40-6-108. Statute of limitations.** (1) An action may be commenced at any time for the purpose
30 of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection~~

1 ~~(a), (b), or (c)~~ of 40-6-105(1)(a), (1)(b), or (1)(c).

2 (2) After the presumption has been rebutted, paternity of the child by another ~~man~~ individual may
3 be determined in the same action if the other ~~man~~ individual has been made a party.

4 (3) An action to determine the existence or nonexistence of the father and child relationship as to
5 a child who has no presumed father under 40-6-105:

6 (a) may not be brought by the child later than 2 years after the child attains the age of majority;

7 (b) may be brought by a state agency at any time after the first application is made under Title IV-D
8 of the Social Security Act for services to the child and before the child attains the age of majority. This
9 subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a
10 paternity action was barred or could have been barred by a shorter limitation period. However, in previously
11 barred actions that are revived by this subsection, the father is not liable to the state agency for support
12 of the child.

13 (4) The father's liability for a statutory debt created by the payment of public assistance is limited
14 to the amount of assistance paid during the 2-year period preceding commencement of the action. This
15 subsection does not limit the subsequent accrual of a statutory debt.

16 (5) Section 40-6-107 and this section do not extend the time within which a right of inheritance
17 or a right to a succession may be asserted beyond the time provided by law relating to distribution and
18 closing of decedents' estates or to the determination of heirship or otherwise.

19 (6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ sections 1 through
20 156, a further action to declare the existence or nonexistence of the father and child relationship of the
21 adopted child may not be commenced, except as provided in 40-8-112."

22
23 **Section 166.** Section 41-3-609, MCA, is amended to read:

24 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
25 relationship upon a finding that any of the following circumstances exist:

26 (a) the parents have relinquished the child pursuant to ~~40-6-135~~ sections 43 and 51;

27 (b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

28 (c) the child is an adjudicated youth in need of care and both of the following exist:

29 (i) an appropriate treatment plan that has been approved by the court has not been complied with
30 by the parents or has not been successful; and

1 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
2 reasonable time; or

3 (d) the parent has failed to successfully complete a treatment plan approved by the court within
4 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
5 legal custody under 41-3-410.

6 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
7 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship
8 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders
9 the parents unfit, unable, or unwilling to give the child adequate parental care. In making the
10 determinations, the court shall consider but is not limited to the following:

11 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
12 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
13 within a reasonable time;

14 (b) a history of violent behavior by the parent;

15 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child
16 caused by the parent;

17 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
18 ability to care and provide for the child;

19 (e) present judicially ordered long-term confinement of the parent;

20 (f) the injury or death of a sibling due to proven parental abuse or neglect; and

21 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
22 parent.

23 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
24 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
25 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
26 physical, mental, and emotional conditions.

27 (4) A treatment plan is not required under this part upon a finding by the court following hearing
28 if:

29 (a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent
30 cannot assume the role of parent;

1 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
2 the incarceration; or

3 (c) the death of a sibling caused by abuse or neglect by the parent has occurred.

4 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
5 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
6 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
7 terminate the offender's parental rights to the child at any time after the conviction or adjudication."

8
9 **Section 167.** Section 41-5-603, MCA, is amended to read:

10 **"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
11 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
12 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
13 until the records are sealed under 41-5-604.

14 (2) Social, medical, and psychological records, predispositional studies, supervision records of
15 probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open
16 only to the following:

17 (a) the youth court and its professional staff;

18 (b) representatives of any agency providing supervision and having legal custody of a youth;

19 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
20 of the court;

21 (d) any court and its probation and other professional staff or the attorney for a convicted party
22 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
23 the party;

24 (e) the county attorney;

25 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
26 majority;

27 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
28 not listed in this subsection (2);

29 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

30 (i) persons allowed access to the records under 45-5-624(7); and

1 (j) persons allowed access under [section 85].

2 (3) Any part of records information secured from records listed in subsection (2), when presented
3 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
4 for the parties to the proceedings.

5 (4) After youth court and department records, reports of preliminary inquiries, predispositional
6 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
7 order of the youth court, for good cause to:

8 (a) those persons and agencies listed in subsection (2); and

9 (b) adult probation professional staff preparing a presentence report on a youth who has reached
10 the age of majority."

11
12 **Section 168.** Section 41-5-604, MCA, is amended to read:

13 **"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court
14 records and law enforcement records pertaining to a youth covered by this chapter must be physically
15 sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is
16 committed.

17 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
18 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed
19 upon termination of the extended jurisdiction.

20 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an
21 agency or department that has in its possession copies of the sealed records shall also seal or destroy the
22 copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

23 (4) This section does not prohibit the destruction of records with the consent of the youth court
24 judge or county attorney after 10 years from the date of sealing.

25 (5) The requirements for sealed records in this section do not apply to fingerprints, DNA records,
26 photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
27 of the court's judgment or disposition, or records referred to in 45-5-624(7) or [section 85]."

28
29 **Section 169.** Section 50-15-223, MCA, is amended to read:

30 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**

acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court has determined the paternity of the person; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment ~~may not be~~ are only subject to inspection, except upon order of a district court, as provided by rule, as provided in [sections 141 through 146], or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new

1 certificate of birth must be prepared on a form prescribed by the department.

2 (7) When a new certificate of birth is established by the department, the department may direct
3 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
4 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

5 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
6 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
7 States and who was adopted through a district court in this state.

8 (b) The certificate of birth must be established by the department upon receipt of a certificate of
9 adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of
10 adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate
11 of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or
12 older.

13 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual
14 country of birth. A statement must be included on the certificate indicating that it is not evidence of United
15 States citizenship for the child for whom it is issued.

16 (d) After registration of the certificate of birth in the new name of the adopted person, the
17 department shall seal and file the certificate of adoption, which is not subject to inspection, except upon
18 order of the district court, as provided by rule, or as otherwise provided by state law.

19 (9) The department may promulgate rules necessary to implement this section."
20

21 **Section 170.** Section 52-2-505, MCA, is amended to read:

22 **"52-2-505. Records to be confidential.** All records regarding subsidized adoption are confidential
23 and may be disclosed only in accordance with the provisions of ~~40-8-126~~ section 141."
24

25 **NEW SECTION. Section 171. Repealer.** Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128,
26 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107,
27 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117,
28 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136,
29 40-8-201, and 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407,
30 MCA, are repealed.

